

107TH CONGRESS }
1st Session

SENATE

{ REPORT
107-19

SUMMARY OF LEGISLATIVE
AND OVERSIGHT ACTIVITIES
DURING THE 106TH CONGRESS

R E P O R T

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE



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Mr. BOND, from the Committee on Small Business,
submitted the following

REPORT

I. INTRODUCTION

As Chairman of the U.S. Senate Committee on Small Business during the 106th Congress, I organized the Committee's agenda to focus on the highest priorities of the small business community. The Committee has listened carefully to the concerns expressed by small business owners across the nation. We concentrated on those concerns, which include, among others, small business tax issues, access to capital, regulatory fairness, equitable government procurement, and workforce preparedness. This report summarizes the legislative and oversight activities of the Committee on these key issues of concern and interest to small businesses.

II. OVERSIGHT OF THE SMALL BUSINESS ADMINISTRATION

A. GENERAL OVERSIGHT—FIRST SESSION

During 1999, the Committee on Small Business undertook a more aggressive approach to oversight of the programs and activities of the Small Business Administration (SBA). The Committee approved the nomination of Ms. Phyllis Fong to be Inspector General of SBA. In addition, the Committee conducted four mark-up meetings to report legislation and conducted hearings on the President's Fiscal Year 2000 budget request for SBA and on the impact of "slotting allowances" on small businesses. To improve its oversight activities, the Committee conducted Roundtable Meetings on programs at SBA and other issues of importance to small businesses.

1. Action on legislation

The Committee approved eight bills in 1999, and seven were signed into law. The eighth bill, the "Independent Office of Advocacy Act," passed the Senate and is pending before the House Committee on Small Business. It is likely to be cleared for the President's approval in 2000.

On February 5, 1999, the Committee marked up S. 364, "Small Business Investment Improvement Act of 1999." The bill included two technical changes in the SBIC program. The first change removes a requirement that at least 50 percent of the annual program level of the approved participating securities under the SBIC Program be reserved for funding with SBICs having private capital of not more than \$20 million. The second technical change requires SBA to issue SBIC guarantees and trust certificates at periodic intervals of not less than 12 months.

S. 364 also made a relatively small change in the operation of the program. This change, however, would help smaller, small businesses to be more attractive to investors. SBICs would be permitted to accept royalty payments contingent on future performance from companies in which they invest as a form of equity return for their investment. Importantly, the royalty feature provides the smaller, small business with an incentive to attract SBIC investment when the return may otherwise be insufficient to attract venture capital.

Lastly, the bill increased the program authorization levels to fund participating securities from \$800 million to \$1.2 billion in Fiscal Year 1999 and from \$900 million to \$1.5 billion in Fiscal Year 2000. This bill passed the Senate on March 22, 1999 and was signed into law on April 5 (P.L. 106-9).

On March 25, 1999, the Chairman obtained a unanimous consent agreement to discharge S. 388, a bill to establish a disaster mitigation pilot program at SBA, from the Committee and to pass the full Senate. The bill established a pilot disaster mitigation program at the SBA. It was similar to legislation approved unanimously by the Committee and Senate in 1998; however, the House of Representatives was not able to consider the bill before the Congress adjourned. After passing muster in the Senate, S. 388 was approved in the House on April 2, 1999 and signed into law on April 27, 1999 (P.L. 106-24).

Early in the year, the Committee entered into informal discussions the House Committee on Small Business on the final content of H.R. 774, "Women's Business Center Act Amendments of 1999." Consequently, the bill was passed by the House of Representatives on March 16, 1999. It was held at the desk in the Senate and on March 24, 1999, it passed the Senate unanimously. H.R. 774 was signed into law on April 6, 1999 (P.L. 106-17).

H.R. 774 increased the authorization level for the Women's Business Center Program to \$11 million and simplified the matching amount paid annually by the Women's Business Centers. With passage of the bill, the SBA was permitted to continue to fund 35 eligible Centers and provide seed funding to new eligible applicant Centers in states not yet served by the Program. Each center provides business and education training, including marketing, finance, and management assistance.

The Senate Committee continued its fast-paced efforts in early 1999 to approve bills that it considered and approved in 1998, but which were not approved by the House before adjournment of the 105th Congress. On March 25, 1999, Chairman Bond received unanimous consent to discharge the Committee from further consideration of H.R. 440, "Microloan Program Technical Corrections Act of 1999." The bill passed the Senate that same day and was signed into law on April 27, 1999 (P.L. 106-22).

The primary purpose of H.R. 440 was to improve the loan loss reserve requirement established for lending intermediaries operating under the Microloan Program operated by the SBA. The bill also made certain technical corrections to the program.

On June 9, 1999, the Committee approved S. 918, "Military Reservists Small Business Relief Act of 1999," after adopting a substitute amendment offered by the Ranking Democrat, John Kerry. As amended the bill authorized special relief delaying repayment of an SBA-guaranteed loan for small businesses that have been adversely affected by the departure of an essential employee who is a military reservist ordered to active duty during a period of military conflict, such as the Kosovo conflict. Further, the bill encouraged maximum use of the SBA's existing entrepreneurial development programs for affected small businesses.

The bill passed the Senate on July 27, 1999, and was referred to the House Committee on Small Business. S. 918 was subsequently incorporated into the final version of H.R. 1568, the "Veterans Entrepreneurship and Small Business Development Act of 1999," which was signed into law on August 17, 1999 (P.L. 106-50).

H.R. 1568, "Veterans Entrepreneurship and Small Business Development Act of 1999" was approved by the House of Representatives on June 29, 1999. At the Committee mark-up on July 15, 1999, the Committee Members agreed unanimously to include the full text of S. 918 in Title III (Technical Assistance) and Title IV (Financial Assistance) of H.R. 1568.

In addition, H.R. 1568 established the Federal government's policy to help veteran small business owners, and it further created a government corporation to coordinate and monitor special initiatives on behalf of veteran entrepreneurs and veteran-owned small businesses. The bill provided assistance to veteran-owned small businesses to enable them to start-up and grow their businesses. It places a special emphasis on small businesses owned and controlled by service-disabled veterans.

H.R. 1568, including the full text of S. 918, was approved by the Senate and House of Representatives on August 5, 1999, and signed into law on August 17, 1999 (P.L. 106-50).

On July 15, 1999, the Committee considered S. 1346, "Independent Office of Advocacy Act," and adopted an amendment offered by Senators Bond and Kerry. As amended, the bill would provide for the independent and nonpartisan operation of the Office of Advocacy at the SBA. S. 1346 would establish for the first time in the Small Business Act that the Office of Advocacy has the statutory independence and adequate financial resources to be an advocate for the small business community. In addition, the bill would provide for a separate authorization to fund the Office of Advocacy, and there would be a separate account in the SBA budget, similar

to the separate accounts for the Office of Inspector General and the Business Loan Program.

S. 1346 was approved by the full Senate on November 5, 1999, and referred to the House Committee on Small Business.

On September 29, 1999, the Committee considered and passed S. 791, "Women's Business Center Sustainability Act of 1999," after adopting a substitute amendment offered by Senator Kerry and an amendment offered by Senator Spencer Abraham on Federal procurement opportunities for women-owned small businesses. As amended, S. 791 authorized a four-year pilot program that allows graduating and graduated Women's Business Centers to compete for new five-year matching grants, known as "sustainability grants." They also included three provisions intended to assist the SBA in its evaluation and selection of recompeting centers.

S. 791 incrementally raised over four years the annual levels of authorized appropriations from \$13 million in Fiscal Year 1999 to \$17 million in Fiscal Year 2003 and established specific requirements for use of available appropriations. The bill was approved by the Senate on November 5, 1999, and the House on November 18, 1999. It was signed into law on December 9, 1999 (P.L. 106-165).

2. Roundtables

One of the most effective initiatives undertaken by the Committee in 1999 was the decision to conduct Roundtable discussions, which allowed the Committee to study issues and legislation in detail. For each Roundtable, an extensive record was created. The information obtained at the Roundtables in some cases established a sufficiently detailed record that will allow the Committee to mark-up legislation without further hearings.

—Roundtable on the Office of Advocacy and SBIR/STTR Programs (April 21, 1999). Statements made at this Roundtable helped establish a record used for drafting S. 1346, the "Independent Office of Advocacy Act," which was subsequently approved by the Committee and passed the Senate on November 5, 1999.

—Roundtable on SBA's 7(a) guaranteed business loan program and the 504 development company loan program (April 27, 1999).

—Roundtable on SBA's SBIC and Microloan Programs (May 12, 1999).

—Roundtable on SBA's Management Assistance Programs (May 20, 1999).

—Roundtable on Small Business Procurement (May 20, 1999).

—Roundtable on S. 1111, the "National Conference on Small Business Act." The testimony at this Roundtable establishes a basis for making changes to the original version of this bill, which the Committee will mark up in 2000.

3. Hearings

As the result of the use of Roundtables, there were only a few Committee hearings held in 1999. On March 16, 1999, the Committee conducted a hearing on the President's Fiscal Year 2000 budget request for SBA. Normally, at least two hearings annually have focused on the SBA budget request. In 1999, Roundtables produced a greater opportunity for the private sector to discuss issues in the SBA budget before the Committee. This was a successful change and should be continued in the future.

The Committee also conducted a hearing into the impact of “slotting allowances” on small businesses. The hearing was the result of a four month investigation by the Committee staff and marked the beginning of a more in depth study of this practice.

B. GENERAL OVERSIGHT—SECOND SESSION

During 2000, the Committee continued its more aggressive approach to oversight of the programs and activities of the Small Business Administration (SBA). The Committee devoted a considerable amount of its time to the Small Business Reauthorization Act of 2000. This legislation was passed on several occasions by the full Senate, after being approved by an 18–0 vote in the Committee. The House of Representatives was unwilling to appoint Conferees to iron out the differences in the Senate and House versions of the bills. Consequently, the final bill was not approved until the December 15, 2000, the last day of the 106th Congress. In addition, the Committee conducted mark-ups of S. 1594, the “Community Development and Venture Capital Act of 2000” and the “Certified Development Company Program Improvements Act of 1999” (H.R. 2614). The complete provisions H.R. 2614 were subsequently included in the final version of the Small Business Reauthorization Act of 2000, which became H.R. 5667. S. 1594 was re-numbered H.R. 5663 and was incorporated along with H.R. 5667 to become part of the Consolidated Appropriations Act 2001 (P.L. 106–554).

1. Action on legislation

The Committee approved three bills in 2000 that were passed by the full Senate and became law as part of the Consolidated Appropriations Act 2001 (P.L. 106–554). In addition, Chairman Bond introduced S. Res. 311, a sense of the Senate resolution expressing support for Federal procurement opportunities for women-owned small businesses, which was adopted unanimously by the Senate.

Every three years, it is Congress’ role to consider and pass legislation re-authorizing most programs at the SBA. On March 21, 2000, the Committee marked-up S. 3121, “Small Business Reauthorization Act of 2000.” As approved by the Committee and passed by the full Senate, it included the following major components:

- Incorporated a separate bill to establish the “Quadrennial Small Business Summit;”

- Incorporated the “Small Business Advocacy Review Panel Technical Amendments Act of 1999” (S. 1156), which had passed the Senate but had not been taken up in the House;

- Incorporated the “Independent Office of Advocacy Act” (S. 1346), which had passed the Senate but had not been taken up in the House;

- Established three-year authorization levels for most of the programs at SBA;

- Amended the Small Business Act and the Small Business Investment Act making changes in the 7(a) guaranteed business loan program, 504 Development Company program, and the Small Business Investment Company (SBIC) program;

- Amended the HUBZone program;

Increased the authorization for the National Women's Business Program to \$1 million annually and made some technical amendments;

Extended the SDB and Drug Free Workplace Programs.

This legislation was amended extensively and debated in the Senate and House over an extended period of time. Although the House refused to appoint Conferees after a Conference was requested by the Senate and it had appointed its Conferees, there were lengthy, intense negotiations between the staffs of the Senate and House Committees on Small Business. The House insisted that the sections of the Senate-passed bill on the Independent Office of Advocacy, Quadrennial Small Business Summit, and the Advocacy Review Panel be dropped. After over three months of discussions and negotiations without any concessions from the House, Chairman Bond agreed to drop these sections in order to insure that the re-authorization bill passed before the end of the 106th Congress.

The House insisted on a last-minute provision to expand the power of the SBA Administrator to challenge Agency decisions to bundled contracts to the detriment of small businesses. This provision was dropped after the Senate Government Affairs and Armed Services Committees blocked Senate consideration of the final version of the legislation.

The legislation re-authorizing the SBIR Program (H.R. 2392) was incorporated in the Small Business Reauthorization Act of 2000, as amended (H.R. 5667). This version of the bill was next incorporated in the Consolidated Appropriations Act 2001, which passed on the last day of the 106th Congress and was signed into law the following week (P.L. 106-554).

On July 26, 2000, the Committee considered and approved S. 1594, the "Community Development and Venture Capital Act of 2000." The Committee adopted by unanimous voice votes a substitute amendment offered by Senator Kerry and two amendments offered by Chairman Bond with respect to investments in low-income urban areas and the percentage of investments to be made in HUBZone areas. As amended, S. 1594 authorized the establishment of a comprehensive economic development program that seeks to stimulate venture capital investment and intensive management assistance in small businesses located in the country's most distressed and under-invested communities.

Specifically, S. 1594 authorized the New Market Venture Capital Program for six years (Fiscal Years 2000-2005) including a total of \$150 million in New Market loan guarantees (debentures) and \$30 million in technical assistance grants. The bill established the BusinessLinc program to promote relationships between large and small businesses and authorized \$6.6 million a year for Fiscal Years 2001-2005. The bill also established the Community Development Venture Capital Program to provide technical assistance to community-based organizations to enable them to make investments in businesses located in low- and moderate-income communities and authorized a total of \$20 million over a four year period (Fiscal Years 2000-2003).

This legislation was reported unanimously from the Committee after it adopted an amendment from Chairman Bond which limited the New Market Venture Capital investments to small businesses located in low-income communities, including HUBZones. Although approved by the Committee, the bill was not passed by the full

Senate. It became part of a package of legislation that was worked out between Speaker Hastert and President Clinton, referred to as the “America Community Renewal/New Markets” bill.

As the Congress completed its negotiations on the final bills to be debated in the 106th Congress, S. 1594 became H.R. 5663, which was incorporated into the Consolidated Appropriations Act 2001. H.R. 5663 passed the Congress on the last day of the 106th Congress and was signed into law the following week (P.L. 106–554). The final version of this bill dropped the section creating the Community Development Venture Capital Program, and it retained the New Market Venture Capital Program and BusinessLinc.

On May 23, 2000, Chairman Bond introduced S. Res. 311, to express the sense of the Senate regarding Federal procurement opportunities for women-owned small businesses. Ten cosponsors joined Senator in the Resolution which was introduced to highlight the importance of women-owned small businesses to the U.S. economy. S. Res. 311 also criticized the Administration for its failure to achieve the 5% Federal procurement goal for women-owned small businesses that was established in 1994 as part of the Federal Acquisition Streamlining Act (FASA).

The Resolution urged the President to hold the heads of each Federal agency accountable for meeting the goal. S. Res. 311 was adopted in the full Senate by unanimous consent on May 23, 2000, the day it was introduced by Chairman Bond.

2. *Hearings*

The number of hearings, roundtables and forums held in 2000 were fewer than in 1999. Much of the work in 1999 paid off with legislation being enacted in 2000. For example, in 1999, Roundtables were conducted on the Office of Advocacy, the 7(a), Microloan, and SBIC programs, small business procurement, and the Quadrennial Small Business Summit legislation. In 2000, legislation on each of these programs was approved by the Committee and passed the Senate. In some cases, as noted above, the legislation became law, and in other cases, it was dropped when the House Small Business Committee refused to consider and approve it.

On February 24, 2000, the Committee conducted a hearing on the President’s Fiscal Year 2001 budget request for SBA. In the years prior to 1999, the Committee had often held two or more hearings annually that were focused on the SBA budget request. The use of Roundtables have allowed the Committee to provide the private and public sectors with greater opportunities to discuss issues and SBA programs before the Committee. Therefore, one hearing on the Administration’s annual budget request for SBA creates the record necessary to enable Chairman Bond to address budget issues and to make recommendations to the Committee on Appropriations.

C. SBA PERFORMANCE AND ACCOUNTABILITY REVIEW

As part of the Committee’s monitoring and oversight efforts to determine the SBA’s ability to achieve its mission effectively, the Committee requested that the GAO begin a review of the SBA’s mission critical programs. The review is intended to review systemic problems in an agency, not just the symptoms of such prob-

lems that might appear in the way a particular program operates. The GAO has entitled this review a “Performance and Accountability Review” or “PAR.”

The PAR is intended to provide an overall assessment of an agency’s major performance and management challenges. The PAR is a comprehensive review of agency operations, including an agency’s strategic and performance planning, information-systems management, financial management, human capital, and budget formulation and execution. The PAR also calls for a review of mission-critical programs and ties the problems an agency might have with its programs to systemic issues related to general agency operations. The Committee intends that the reports compiled from the PAR serve as a blueprint for the incoming administration on how operations of the SBA can be made more efficient and effective.

On May 31, 2000, July 19, 2000, and July 20, 2000, respectively, the GAO released its first reports prepared as a result of the PAR. These reports were on three distinct topics, including: (1) a report on the SBA’s information technology management; (2) testimony on the SBA’s human capital management; and (3) two reports on the 8(a) program. In a hearing held by the Committee on July 20, 2000, Chairman Bond requested that the SBA take steps to immediately fix the problems identified by the GAO.

1. Information technology management

The GAO reported the results of its review of IT management in a May 31, 2000, report entitled “Information Technology Management: SBA Needs to Establish Policies and Procedures for Key IT Processes.” The GAO found that the SBA has failed to develop policies and procedures to manage its IT system. The GAO report breaks out these policies into five broad categories: (1) IT investments; (2) architecture; (3) software development and acquisition; (4) security; and (5) human capital. The GAO report finds that policies and procedures for these five categories are only partially implemented, are in draft form or do not exist in any form.

The GAO found that the SBA has failed to establish policies and defined processes to select, control or evaluate SBA’s investment. IT investment management entails the selection, control and evaluation of investment in the IT system. Thus, the GAO concluded that the SBA has no assurance that its IT projects benefit the SBA or maximize the return on investment and cannot assure that its projects are developed within time and budget limits and according to requirements.

The report also stated that the SBA does not have established architecture maintenance procedures, although it has prepared some draft policies. IT architecture is the blueprint that guides and limits the development of the IT systems and ensures that a structure and description exist for the system. Thus, the GAO concluded that the SBA has no assurance that the agency’s current and future information processing needs will be met or that new systems and software changes will be compatible with other systems.

The GAO also found that the SBA lacks policies for software development and acquisition to produce information systems that meet system needs and established budget and time constraints. As a result, the report stated that project plans and software user

needs may not be met, software acquisition plans may not be developed and contract requirements may not be specified.

In addition, the report provided that the SBA lacks information security procedures, including conducting periodic risk assessments for all mission critical systems and providing training and education to promote security awareness among staff. In addition, the SBA has not centralized its security management duties or established a comprehensive disaster recovery and business continuity plan. Thus, the GAO found that the security of SBA's systems are compromised, because security problems are not identified or addressed, and staff is not advised of security policies.

Finally, the report found that the SBA has no policies and procedures to assess or address its IT staff's current and future needs or inventory of IT knowledge and skills. It has not evaluated its progress in improving human capital capabilities. Thus, the GAO determined that the SBA cannot effectively manage its hiring or retention practices.

2. Human capital

In its testimony at the July 20, 2000 hearing, the GAO stated that its review of the SBA's human capital demonstrated that while the SBA has defined the vision for the agency and has begun to take steps for better managing its human capital activities, more steps need to be taken. The GAO found that the SBA has not conducted the workforce planning it needs to determine whether it has the appropriate personnel to conduct its mission now or in the future. Also, the report provides that the SBA has not prepared for succession of its current senior management or trained its current staff to ensure that they can perform their current jobs. In sum, the report provided that while the SBA has undertaken useful human capital initiatives, these efforts are incomplete and place at risk the success of the agency's attempt to redesign its business processes and to transform its workplace.

3. 8(a) Program

The GAO prepared two reports on the 8(a) program during its Performance and Accountability Review. The first report concludes that the SBA's 8(a) database does not meet the information needs of headquarters or district officials, despite that fact that it was only implemented in 1995. The second report provides that the SBA is not focusing its efforts in the 8(a) program on the objectives of 8(a) firms.

With respect to the SBA's 8(a) database, the GAO report finds that the SBA has incomplete contract information, does not track its business development activities and has data quality problems with demographic information. Like other SBA systems, the security is inadequate. Resulting problems include the inability of headquarters and districts to determine the number of contracts awarded to 8(a) firms or to analyze the best and worst practices in the districts.

The second report addresses the business assistance the SBA provides to 8(a) firms. The report found that the assistance is inconsistent with the goals of 8(a) companies. The GAO reported that a substantial number of firms in the 8(a) program do not obtain contracts, even though that is the primary reason firms enter the

program. The concentration of 8(a) contracts within a few firms has been cited as a material weakness in this program in the SBA's Federal Manager's Financial Integrity Act report every Fiscal Year since 1994. Additionally, the GAO report states that the SBA does not focus on providing 8(a) firms with contracting assistance, but concentrates on management assistance and ensuring that 8(a) firms have complied with SBA's reporting requirements. As a result, participant firms have reported widespread dissatisfaction with the program.

Additionally, the GAO reported that SBA provides management assistance to only a small fraction of firms per year. The SBA does this through either executive training (which has served only about 10 percent of 8(a) firms) or through their mentor-protégé program (which, as of April 2000, only 40 such agreements existed). The report raised the concern that much of the executive training has been geared towards firms that are already successful. Accordingly, the GAO recommended that the agency should reassess whether to devote most of the 7(j) funding they receive to develop the abilities of 8(a) firms to obtain contracts or to restrict the business development training to firms with a demonstrated need.

Finally, the report addresses the SBA's measure of program success. The report provides that the SBA's measure bears no relation to the actual success of 8(a) firms. Instead, the report concludes that the SBA measures success by the number of firms that complete an elementary training session and stay in the program for nine years.

D. SBA LOAN MONITORING SYSTEM

The SBA is undertaking a significant effort to replace most of its major computer systems. One of the most important of these is the Loan Monitoring System (LMS) which will permit SBA to keep track of its loan portfolio. Since the SBA's initial request for funding of this system, there have been a number of problems that have required the Committee's attention. The House Small Business Committee requested that the GAO study the proposals as outlined by the SBA. The GAO's efforts to date have shown many inadequacies with the proposals outlined by the SBA and the Committee has been working with staff from the House Small Business Committee, the GAO and the SBA IG to ensure that the systems development project is successful.

In the second session of the 106th Congress, the Committee's efforts continued as part of both the Performance and Accountability Review (PAR) conducted by GAO and the original GAO efforts concentrating on the LMS. It is clear that while SBA has taken many steps to improve their internal procedures and to produce an adequate design for their system, that many problems remain. The Committee remains concerned that an insufficient amount of planning and design will result in excessive spending and a system that will not meet the expectations of both the SBA and the Congress. The Committee intends to continue to work closely with SBA and GAO to reduce the risk of failure and to ensure that these design problems are rectified.

E. SMALL BUSINESS INNOVATION RESEARCH PROGRAM

1. Legislation

To prepare for the reauthorization of the Small Business Innovation Research (SBIR) program, the Committee held two roundtable meetings in 1999. On April 21, 1999, the Committee held its first roundtable on the SBIR program. The participants agreed that the program has been successful and has established a basis for collaboration between small businesses, universities, government, large companies, venture capital firms, and commercial banks which increases the already proven abilities of small businesses to innovate and commercialize technology successfully. A significant concern of certain participants, however, was the geographic distribution of SBIR awards. This issue was also highlighted in a GAO report released on June 4, 1999 (GAO/RCED-99-114), which found that companies in one-third of the states received 85 percent of the SBIR awards from Fiscal Year year 1993 through 1996.

To address the concerns raised by the GAO report and by individuals active in the SBIR program in prior Committee proceedings, the Committee held a follow-up roundtable on August 9, 1999, to consider specifically the geographic distribution of awards made under the SBIR program and to examine proposals to encourage greater participation by companies located in states that receive a disproportionately small share of SBIR awards. At the roundtable, Chairman Bond requested recommendations on how the Federal government could best assist underachieving states to encourage the development of high-technology small businesses that could, if interested, participate in the SBIR program and alleviate the geographic concentration of SBIR awards.

Most participants at the August roundtable agreed that using existing state infrastructure to provide assistance to high-technology small businesses that may participate in the SBIR program is the most efficient and effective manner of encouraging such participation. As businesses in different states may have different needs, many participants also agreed that economic development organizations in each individual state should have the discretion to determine which activities would best assist small firms in the state.

On March 21, 2000, the Committee marked-up the Small Business Innovation Research Program Reauthorization Act of 2000. The bill considered by the Committee was H.R. 2392, the House-passed legislation, with an amendment in the nature of a substitute. The substitute amendment: (1) reauthorized the SBIR program for ten years; (2) ensured that small businesses are granted the same data rights when provided Federal non-SBIR third-phase awards that they are granted when receiving phase-one and phase-two awards; (3) required program agencies to submit to Congress and the Office of Management and Budget annual performance plans for program activities; (4) required the SBA to maintain a database containing (i) the name, size, location and identifying number of each small business receiving a first- or second-phase award, (ii) an abstract of the award, (iii) the Federal agency making the award, (iv) the date and amount of the award, and (v) an identification of any concern established for the commercial application of an award; and (5) required agencies to report annually to

the SBA on the methodology used to calculate their extramural budgets.

In addition, the bill established the Federal and State Technology Partnership Program (the FAST program), a proposal of the Chairman. The FAST program is a competitive matching-grant program to encourage states to assist in the development of high-technology small businesses. Under the FAST program, organizations in every state (including state economic development agencies, small business development centers, or any other entity involved in the development of high-technology firms), either individually or on a regional basis, are eligible to apply for matching grants or to enter into cooperative agreements. Such grants or cooperative agreements can be used to enhance or develop: (1) technology research and development by small business concerns; (2) technology transfer from university research to technology-based small business concerns; (3) technology deployment and diffusion benefitting small business concerns; and (4) the technological capabilities of small business concerns through the establishment of consortia comprised of state and local development agencies, small business concerns, industries and universities. The FAST program also permits grants to be used by states for SBIR outreach, financial support and technical assistance, including: (1) providing grants or loans to companies to pay a portion or all of the cost of developing SBIR proposals; (2) operating a mentoring network to provide technical assistance to small businesses; and (3) encouraging the commercialization of technology.

Prior to requesting consideration of the bill on the Senate floor, Chairman Bond began negotiations among the leadership of the Senate Committee on Small Business and the House Committees on Science and Small Business to reach compromise language for reauthorization of the Small Business Innovation Research (SBIR) program. On July 19, 2000, the Committee substitute to H.R. 2392 was considered on the floor. Chairman Bond offered a Manager's amendment that was the result of the negotiations between the three Committees with legislative jurisdiction over the SBIR program and was an amendment in the nature of a substitute. The Manager's amendment contained all major House and Senate provisions, some of which had been amended to reflect a compromise position. The Manager's amendment, and the underlying bill, were adopted by unanimous consent. The amended legislation was then referred to the House for approval.

Eventually, the Senate passed the Small Business Innovation Research Program Reauthorization Act of 2000 and it was included in the Labor, Health and Human Services and Education appropriations act which was passed by both the Senate and House of Representatives on December 15, 2000. The President signed the bill into law on December 21, 2000. Additionally, at the request of Chairman Bond, the FAST program was appropriated \$3.5 million for Fiscal Year 2001.

2. Oversight

a. Management of Agency programs

On November 18, 1999, the Committee received a report from the Office of Inspector General (OIG) of the Department of Health and

Human Services regarding the administration of the SBIR program at the National Institutes of Health (NIH). The report detailed the NIH's failure to ensure that SBIR grantees comply with invention reporting requirements and its failure to evaluate the success of SBIR grantees at commercializing products developed under the SBIR program.

In the report, the OIG independently reviewed 100 SBIR phase two grants awarded in fiscal years 1994 and 1995. The OIG verified that 12 patents were granted as a result of such awards. The NIH, however, was only aware of one of the patents. Each agency that provides Federal research and development awards is required to have provisions in its funding agreements with small businesses or nonprofit organizations that obligate the business or organization to disclose each subject invention to the Federal agency within a reasonable time after it becomes known. This requirement permits the Federal government to track such inventions so that it may exercise its rights regarding them, including, but not limited to, its right to a nonexclusive, nontransferable, irrevocable and paid-up license to utilize the particular invention. According to the report, the primary reason for NIH's ignorance of existing patents is that the NIH had not been providing clear information to SBIR grantees regarding invention reporting requirements or the intellectual property rights of the Federal government that arise from such inventions.

In response to the report, Chairman Bond sent a letter to SBA Administrator Alvarez on November 19, 1999, requesting that the SBA comply with its statutory obligation to oversee the SBIR program and alleviate this problem. The letter pointed out that the Small Business Act requires the SBA to survey and monitor the operation of SBIR programs within participating Federal agencies. Additionally, Chairman Bond's letter referred to the SBA's own policy directives that require each SBIR program agency to ensure that "each funding agreement under the SBIR program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights . . ."

The letter also addressed another example of unsatisfactory record-keeping and oversight relating to the SBIR program. In the Fall of 1999, the Committee received disturbing information regarding the data the SBA maintains on SBIR awardees. Specifically, the Committee learned that the GAO, in preparing its reports on the SBIR program in 1998 (RCED-98-132) and 1999 (RCED 99-114), spent substantial resources correcting and updating information in the SBA's database on SBIR awardees.

Chairman Bond's letter requested that the SBA describe to the Committee how it planned to ensure that each Federal agency with an SBIR program provides clear instruction to SBIR grantees regarding the Federal government's intellectual property rights and invention reporting requirements. Moreover, the letter requested that the SBA provide information to the Committee explaining how it is appropriately maintaining a database on SBIR grantees. In response to Chairman Bond's letter, the SBA began drafting a notice to the ten SBIR Federal agencies directing them to comply with the patent reporting requirements and is updating its database on SBIR awardees.

b. Management of the SBIR Rural Outreach Program

On April 26, 2000, Chairman Bond and several other members of the Small Business Committee sent a letter to SBA Administrator Alvarez regarding the SBA's handling of the SBIR Rural Outreach Program. The Rural Outreach Program provides grants to those states whose businesses have historically received fewer SBIR awards than a majority of other states. The letter was in response to an SBA decision to provide a \$19,000 grant to each eligible state, regardless of the quality of a state's proposal of the services that it planned on conducting. The letter specifically requested the SBA withdraw its decision and provide funding on a competitive basis. In addition, the letter pointed to the SBA's failure to request funding for the Rural Outreach Program in its budgets for Fiscal Years 1999, 2000 or 2001. Accordingly, the letter requested that the SBA support full funding for the Rural Outreach Program for Fiscal Year 2001. As a result of the letter, the SBA rescinded its plan to provide each state with the same grant amount and, instead, distributed grant awards based on the proposals the states had prepared.

c. SBIR programs at the National Aeronautic and Space Administration (NASA) and the Department of Defense

Between the end of Fiscal Year 2000 and enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Department of Defense and NASA delayed the funding of contracts with small businesses that had already been awarded phase one and phase two contracts under those agencies' SBIR Programs. As a result of these actions, the Committee received information that some small businesses were prepared to begin laying off employees because the funding that they had relied upon was not being provided to them in a timely manner.

On November 20, 2000, Chairman Bond, along with Ranking Member Kerry, wrote to the Secretary of Defense, William Cohen, and the NASA Administrator, Daniel Goldin, requesting that they utilize their discretion to fund immediately SBIR awards that their agencies had already determined to award. Following enactment of the SBIR Program Reauthorization Act of 2000, Chairman Bond and Ranking Member Kerry, along with other members of the Committee, again wrote Secretary Cohen and Administrator Goldin to request that they make all pending SBIR awards without further delay. Additionally, the letter requested that the agencies set aside the full 2.5 percent of their extramural research and development budgets for Fiscal Year 2001 for their respective SBIR programs. In response to the letters, Secretary Cohen and Administrator Goldin assured Chairman Bond that their agencies were proceeding with diligence to fund all pending SBIR awards. Secretary Cohen and Administrator Goldin also confirmed that their agencies would set aside at least 2.5 percent of their extramural research and development budgets for Fiscal Year 2001 for their SBIR programs.

F. SMALL BUSINESS TECHNOLOGY TRANSFER RESEARCH PROGRAM

In anticipation of Committee action to reauthorize the Small Business Technology Transfer (STTR) Program in 2001, Chairman

Bond requested the General Accounting Office to review certain issues related to the program. Among other matters, the GAO is reviewing the extent to which the STTR program promotes actual transfer of under-utilized technology from research institutions to the commercial sector. The GAO report is due to the Committee in late Spring of 2001.

G. ACCESS TO EQUITY CAPITAL

An ongoing concern of small businesses has been access to equity capital. In response to such concerns, Chairman Bond requested the GAO to undertake a review of the costs and processes of small businesses obtaining equity capital, including conducting public offerings, engaging in private placements of securities and receiving funds from venture capitalists. On September 29, 2000, the GAO provided a report to the Committee focusing on: (1) the major sources of external equity capital for U.S. small businesses and the SBA's Office of Advocacy estimate of its perceived needs for equity capital financing; (2) trends for the period of 1994–1999 in small business equity capital financing; (3) how market practices and securities law regulations for equity capital-raising activities could affect small business; and (4) any efforts undertaken by Federal and state agencies to facilitate small businesses' access to equity capital.

The Committee is reviewing the findings of the report and, based on such findings, considering appropriate policy responses in the 107th Congress.

H. HUBZONE PROGRAM

1. Program roll-out

As of January 1, 1999, the HUBZone program enacted in the Small Business Reauthorization Act of 1997 had still not been officially unveiled nor were applications available to prospective participants.

Revisions to the Federal Acquisition Regulation (FAR) had been published as interim rules in the Federal Register on December 18, 1998. The FAR agencies had included a determination that “urgent and compelling reasons” existed for putting the rule into effect prior to a period of public comment. This, plus the rules' effective date of January 4, 1999, would have allowed the program to begin operations at that time—which was already well behind the schedule set forth in the HUBZone Act. However, SBA had not been ready to unveil the program when the regulations were in place. (It should be noted that Chairman Bond submitted comments on the FAR rules on February 16, 1999).

On February 25, 1999, Chairman Bond sent a letter to Administrator Alvarez, formally expressing concern at the delay in unveiling the program. Chairman Bond asked Administrator Alvarez to provide a timetable for the remaining activities associated with unveiling the program: finishing the electronic application, hiring an Associate Administrator for the program, and hiring support staff. Chairman Bond also requested a detailed explanation of how SBA used its Fiscal 1998 HUBZone program appropriation of \$2 million without managing to get the program up-and-running. Chairman Bond requested this information by March 5.

On March 8, 1999, Administrator Alvarez responded with a letter that provided no timetable, but did discuss the status of each of the remaining activities yet to be accomplished. The letter also indicated that the agency had managed to obligate virtually the entire Fiscal 1998 appropriation, and provided broad categories of how those funds were allocated. Administrator Alvarez also stated SBA had decided to delay implementation until the comment period expired on the FAR interim rule, thereby defeating the purpose behind the FAR agencies' determination that "urgent and compelling reasons" existed for the rule to take effect on January 4 while the comment period was still in progress.

During a Small Business Committee hearing on March 16, 1999, on the President's Fiscal 2000 budget request for SBA, Chairman Bond hand-delivered a letter to Administrator Alvarez expressing "disappointment" at the "lack of specificity" in her March 8 response letter. Chairman Bond's letter requested greater detail on SBA's use of the Fiscal 1998 HUBZone appropriation and asked eight specific questions. Chairman Bond also pointed out Administrator Alvarez' failure to provide a timeline as requested. The letter also challenged SBA's decision to wait for the FAR interim rule comment period to expire.

During the hearing, Administrator Alvarez announced that SBA would unveil the HUBZone program and begin accepting applications the following Monday, March 22, 1999. On March 26, 1999, Administrator Alvarez responded to Chairman Bond's March 16 letter, confirming that SBA had begun receiving applications that day. Administrator Alvarez provided additional information on the Fiscal 1998 appropriation, noting that the funds had been obligated but not necessarily been outlaid (spent) yet. SBA transferred 10% of the HUBZone appropriation to cover the agency's indirect costs in setting up the program (such as use of staff detailed from non-HUBZone offices at SBA) and expected to do the same in Fiscal 1999. Moreover, SBA obligated \$350,000 of the HUBZone appropriation for grants to the Tribal Business Information Centers (TBICs), which provide an outlet for HUBZone information (and other SBA program information) on Indian reservations. Of the total of \$607,000 provided to the TBICs, 58% of the funds came from the HUBZone account.

A staff discussion on April 13, 1999 provided further detail about the Fiscal 1998 appropriation. In past years, TBICs had received funding from the Department of Interior. Accordingly, SBA had not requested funds for them in the past, but had requested money for TBICs in 2000 (\$1 million). Moreover, the grants for the TBICs had not actually been outlaid; they were simply obligated to keep the funds available for the TBICs and to keep the funds from lapsing to the Treasury at the end of the Fiscal Year.

2. Implementation issues

As the HUBZone program proceeded, implementation problems arose and progress was made on some fronts to address those problems.

Tribal Enterprises and Alaska Native Corporations. Efforts continued during the 106th Congress concerning the eligibility of Tribally owned enterprises and Alaska Native Corporations for the HUBZone program. Because the HUBZone Act requires that small

businesses be 100% owned by U.S. citizens, all HUBZone applicants needed to be owned by flesh-and-blood human beings (who can be born or naturalized and therefore citizens). An ownership stake by Tribes as units or by Alaska Native Corporations disqualifies a firm from the HUBZone program under the original legislation.

A preliminary version of legislation to correct this problem was included as subtitle A of Title VI in S. 3121, the Small Business Reauthorization Act of 2000, as approved by the Committee on Small Business on March 21, 2000. However, negotiations continued with the expectation that more definitive language would replace subtitle A when the bill was taken up by the full Senate. Continuing negotiations on this issue, as well as on the commodities issue, caused a delay in filing the Committee's report with the full Senate. The report on the Small Business Reauthorization Act of 2000 was filed on September 27, 2000 (S. Rpt. 106-422).

As approved in the Committee-reported version of S. 3121, the legislation created a parallel structure in which the types of firms eligible under the program would be listed as "HUBZone small business concerns" and each type of firm would have a corresponding obligation under the program to be certified as a "qualified HUBZone small business concern." No firm would be deemed presumptively qualified merely because of the type of firm; it would have to do something to advance the program's goals to participate. Alaska Native Corporations would be able to be deemed "qualified" under a relaxed standard, due to the unique nature of Alaska, and this relaxed standard would be available to all Alaska small businesses under a pilot program. Finally, the legislation included language previously used by the Committee on Indian Affairs to address Indian lands issues in Oklahoma, where the entire state was at one time a reservation, and language to ensure that isolated plots of lands placed into trust (e.g., in prosperous areas far from a current reservation) would not be eligible for HUBZone status.

The final negotiated package retained the parallel structure and the Indian lands provisions of the Committee-reported package. It moved the entire relaxed standard for Alaska (for both Alaska Native Corporations and small businesses generally) into the proposed pilot program. The final language also altered the "cap" in the pilot program to reflect corrected data supplied to the negotiators; the pilot program would shut down if Alaska's share of contract dollars doubled (which would indicate that the standard was probably too relaxed). This was the intent of the Committee-reported version, which set the cap at 1.5% of all small business contract dollars nationally; corrected information supplied subsequently indicated that this cap should be set at 2%. This package was introduced into the Senate as S. 2569 on May 16, 2000. A statement by Chairman Bond and a section-by-section analysis of the bill appear in the Congressional Record for May 16, 2000, at S4019-20.

The language ultimately replaced the "placeholder" subtitle A in the Committee-reported bill, except that the Committee-reported short-title, "HUBZones in Native America Act of 2000," was retained. The pilot program was ultimately eliminated in negotiations with the House. The language became law as part of the Small Business Reauthorization Act of 2000 (H.R. 5667, passed by

reference in Public Law 106–554, the Consolidated Appropriations Act, 2001, §1(a)(9))

Commodities Procurement. During 1999, the Small Business Committee was informed of a potential loophole in the manner the HUBZone program was structured that could result in anti-competitive results in procurement of certain agricultural commodities in the Food for Peace program. In particular, the allegation was that a single HUBZone small business concern could use the benefits of the HUBZone program to lock up the vast majority of the corn-soy blend market, causing other vendors to abandon the product and reducing the number of competing vendors available to bid on the product.

The concern was that the ten percent price evaluation preference in full and open competition would be overwhelmingly decisive for commodities that trade in a relatively narrow price range. Ultimately, it appeared that a HUBZone firm could contract for up to twice its plant capacity, subcontract out the half that it would be unable to produce, and sell its corn-soy blend to the Government at up to ten percent higher prices.

Chairman Bond agreed that this may have revealed a potential unintended abuse with the HUBZone program's application to commodities. However, he was unwilling to make permanent changes to the HUBZone program based on the single hypothetical example of corn-soy blend. Changes that might make sense in that market might have additional unintended consequences for other commodities. He therefore sought to put a ceiling on any potential abuses that might result while leaving the issue unresolved for further investigation and correction in the 2000 small business reauthorization bill.

On June 28, 1999, Chairman Bond filed an amendment to the Fiscal 2000 Agriculture Appropriations bill. (The amendment was erroneously assigned two numbers as S. Amdt. 1038 and S. Amdt 1039.) This amendment would have prohibited expenditure of the Agriculture Appropriations funds to award contracts through the HUBZone program if more than 50% of the dollar value of the contracts would be awarded to any single vendor. This amendment was filed but not formally called up for consideration.

Negotiations continued on the amendment language, and the approach outlined in S. Amdt. 1038/1039 ultimately was abandoned as impracticable. It would be impossible to know over the course of a year when 50% of the contracts had been awarded to a single vendor, since the amount of commodity to be purchased over the course of the year would not be known. (Amounts to be purchased in a given month are determined by the Agency for International Development, which notifies USDA's Commodity Credit Corporation to do the actual purchasing.)

The Agriculture Appropriations bill was set aside from Senate consideration on June 30, 1999. When the Senate returned to the Agriculture Appropriations bill, Chairman Bond offered a revised amendment (S. Amdt. 1527) on August 4, 1999. This amendment placed a different limitation on HUBZone contracts, in that a HUBZone firm would be able to receive contracts only up to its own production capacity and would not be able to subcontract out performance of the contract to another firm only to sell the product to the Government at a higher price. This amendment was offered by

Agriculture Appropriations Subcommittee Chairman Thad Cochran on behalf of Chairman Bond, and it was agreed to by unanimous consent as part of en bloc consideration of several pending amendments. Chairman Bond's explanatory statement submitted for the record appears in the Congressional Record for August 4, 1999, at S10198–99.

The Bond amendment was further modified in conference to limit the price evaluation preference to 5% (half of the 10% provided in the HUBZone Act) for contracts of up to 50% of the total monthly tender for the commodity, and to 0% for amounts above 50%. Subcontracting limitations in the Senate-passed amendment were also retained. Finally, the conferees included report language reminding contracting officers of their authority under the Competition in Contracting Act of 1984 to exclude a particular vendor in a given purchase if that vendor has received such a large market share as to jeopardize USDA's vendor base. Additional report language was included that this authority did not allow USDA to make this determination for an entire class of vendors (e.g., pre-emptively to exclude all HUBZone vendors) but only on a case-by-case, as-needed basis. The conference-modified Bond amendment became law as § 751 of the Fiscal 2000 Agriculture Appropriations bill (Public Law 106–78 of October 22, 1999).

Having obtained a temporary bandage for the potential problem of HUBZone purchases of commodities, Chairman Bond set out to keep his commitment to make a long-term fix in the Small Business Reauthorization Act of 2000. Consistent with his view that the proper fix should be broadly applicable to all commodities, to avoid unduly complicating the HUBZone program with special rules, Chairman Bond sought to collect information on the magnitude of the problem. On March 9, 2000, Senators Bond and Kerry sent letters to Agriculture Secretary Dan Glickman, Defense Secretary William Cohen, and Veterans Affairs (VA) Secretary Togo West, to obtain specific information on these agencies' purchases of commodities. (During the OSDDBU roundtable on November 9, 1999, these three agencies had been identified as purchasers of commodities. S. Hrg. 106–401, at 24.)

Responses from the agencies revealed that the Department of Agriculture (USDA) was substantially different in this regard than the Departments of Defense or VA. To avoid additional unintended consequences in those Departments, legislation tailored to USDA commodities purchases would be appropriate.

The Committee-reported version of the Small Business Reauthorization Act of 2000, S. 3121, therefore included a provision (§ 612) waiving the 10% price evaluation preference in full and open competition if the contracting officer set aside at least 10% of the purchase for the HUBZone program, if an additional 10% were set aside for some other small business program, or set aside at least 20% of the purchase for the HUBZone program in the absence of other small business program set-asides. This would use the price evaluation preference as an incentive to get contracting officers to set aside portions of commodities procurements for the HUBZone program and to ensure that such procurements would contribute approximately their fair share toward the Government-wide goal of 23% of prime contracting dollars for small business. The legislation was approved by the Small Business Committee on March 21,

2000, with the understanding that negotiations would continue on an outstanding issue: what to do in the case where only one HUBZone firm existed, since a set-aside is appropriate only in cases where two or more such firms exist (two or more being required to ensure competition in a set-aside, in which a procurement is set aside for competition restricted to a certain class of business concern). Final language representing the outcome of negotiations would be spliced into the bill prior to passage by the full Senate, in lieu of the language approved at markup. Negotiations on the commodities procurement provision, as well as on the Tribal enterprise and Alaska Native Corporation provision, delayed the filing of the Committee's report on the bill until September 27, 2000.

The final language abandoned the approach of the Committee-reported bill, of waiving the price evaluation preference as an incentive to make set-asides. The situation in which only one firm was a HUBZone concern (which was the case in the procurement of corn-soy blend, the instant case that brought the matter to the Committee's attention initially) proved unresolvable. Instead, the final language adopted a general prohibition on subcontracting in HUBZone purchases of commodities, and phased-down the price evaluation preference. The price evaluation preference would be the full 10% for the first 25% of a commodity being procured in a given invitation (solicitation), then would be reduced to 5% for the fraction between 25% and 40% of the invitation, and then phased-out entirely to 0% above 40% of the invitation.

The provision passed as part of the Small Business Reauthorization Act (H.R. 5667), included by reference in § 1(a)(9) of the Consolidated Appropriations Act, 2001 (Public Law 106-554).

Parity with the 8(a) Program. At a staff briefing on February 10, 2000, SBA indicated several revisions the agency intended to pursue in the HUBZone regulations. One of those was an automatic preference for the 8(a) program over the HUBZone program.

On February 16, 2000, Chairman Bond wrote SBA Administrator Aida Alvarez to comment on the intended regulatory revisions. After supporting SBA's proposal to remove its existing affiliation restriction on HUBZone firms, Chairman Bond declared his absolute opposition to the automatic preference for 8(a), as contrary to the agreement struck in the Senate Small Business Committee during markup of the HUBZone Act in 1997.

On February 25, 2000, Administrator Alvarez responded to Chairman Bond's letter, stating that an automatic preference for 8(a) was already in effect under current regulations and was not being proposed. She stated that she had committed to protect the 8(a) program at the time the HUBZone Act was adopted. She also stated this during a question-and-answer period at a Small Business Committee hearing on the President's Fiscal 2001 budget request for SBA (S. Hrg. 106-543, at 49) and in subsequent response to written questions submitted at the hearing (Id., at 52-54, 103-116).

During markup of the Small Business Reauthorization Act of 2000, the Committee included language to state expressly that neither SBA nor the Federal Acquisition Regulation Council could establish a priority for either the 8(a) or the HUBZone program ahead of the other. The same provision would give statutory au-

thority for SBA's current regulations providing a preference for firms that are both 8(a) and HUBZone certified.

On May 2, 2000, SBA Administrator Aida Alvarez wrote Chairman Bond to express her "strong opposition" to the parity language included in the Committee's markup of the Small Business Reauthorization Act. The letter did not threaten a Presidential veto, however.

The language on parity was dropped when the Small Business Reauthorization Act was passed, on direction from Chairman Bond, who determined that the bill could not be passed otherwise.

Other Legislative Provisions. Subtitle B of the HUBZone title (Title VI) of the Small Business Reauthorization Act of 2000 (H.R. 5667, passed by reference in §1(a)(9) of Public Law 106-554) includes provisions to make technical corrections in the original law, as well as corrections of a more substantive nature. Most significant of these provisions is an additional category of HUBZone area, to be known as "redesignated areas." This provision addressed a problem that was barely noticeable in 1999, but threatened to do major harm in 2000.

Nonmetropolitan counties that qualified because of disproportionately high unemployment were subject to change annually, as the Bureau of Labor Statistics (BLS) issued new annual unemployment statistics. In 1999, only a handful of firms were affected by the new BLS data, because so few firms were certified. However, in 2000, a larger number of firms could have been affected, since more firms had been certified and they were more widely distributed across the country. Decertifying large numbers of firms that had not seen any benefit to the program would have threatened the HUBZone program by giving it a reputation as not worthwhile. Also, counties that could change into and out of HUBZone status annually would not attract small business concerns through the HUBZone program, because business owners would not want to invest in a location that would not allow them to recoup their investments.

In recognition of this problem, the Committee included a "grandfathering" provision in the Small Business Reauthorization bill (S. 3121) marked up on March 21. The Committee-reported version sought to stabilize the designation of qualified nonmetropolitan areas by using a three-year average of unemployment data, then giving firms a one-year period to conclude their activity in the HUBZone program once their county became ineligible. This complicated provision was subsequently simplified by providing for areas to move into a new category of "redesignated area" once they ceased to be eligible on the basis of economic data. An area could remain a "redesignated area" for three years. Essentially, this ensures that an area currently qualified on the basis of economic statistics will remain eligible for three years. To ensure simplicity, the "redesignated area" classification would also be available to counties and census tracts that qualify on the basis of income.

Due to the imminent release of new BLS data, Chairman Bond considered this an urgently needed provision. Accordingly, he authorized the provision to be placed on H.R. 2614, the Certified Development Company Program Improvements Act of 2000, when it passed the full Senate. However, the House refused to agree to this provision, with Members objecting to any HUBZone provision as long as the matter of HUBZone/8(a) parity was unresolved. When

the bill was in conference, it became the Senate Leadership's preferred vehicle for the tax relief package (prompting a Presidential veto threat), and the small business provisions were consolidated with the broader reauthorization package to be passed by reference as H.R. 5545. The "redesignated area" provision was retained when the final version of the Small Business Reauthorization Act was introduced as H.R. 5667 and passed by reference.

Subtitle B of Title VI also revised the definition of "qualified non-metropolitan county" to freeze the definitions of "nonmetropolitan" as of the preceding decennial census. The Office of Management and Budget occasionally changes its classification of certain counties as they become more integrated into the economic life of a nearby metropolitan area. In Chairman Bond's home state of Missouri, for example, Andrew, Clinton, Lincoln and Warren, and Webster Counties were added to the St. Joseph, Kansas City, St. Louis, and Springfield metropolitan areas (respectively) after the 1990 census. These counties were effectively excluded from the HUBZone program as a result. They were nonmetropolitan areas at the time of the census, so no census tracts were selected in those counties to reflect their economic position relative to the urban area. However, once they were reclassified as metropolitan counties, they could no longer qualify under the HUBZone tests for nonmetropolitan counties. The rewritten definition of "qualified non-metropolitan county" keeps both the nonmetropolitan and metropolitan classifications as of the preceding census.

The revised definition also eliminates an erroneous placement of the unemployment test for nonmetropolitan counties. The original HUBZone Act had placed that test outside the language referring to nonmetropolitan areas, potentially making it possible for metropolitan counties to qualify if they have high enough unemployment. Under a literal reading of the former definition, the City of St. Louis, MO and Bronx County, NY would be qualified nonmetropolitan counties. This is not desirable because it does not target the program adequately for a metropolitan environment. Designating an entire city as a HUBZone would simply allow firms in relatively prosperous areas of the city to win contracts, without relocating to truly distressed areas as the program intends.

The new HUBZone provisions also extend eligibility to small businesses owned wholly or partly by Community Development Corporations, provided all other owners are U.S. citizens or small business concerns, and provided they maintain a principal office in a HUBZone and hire 35% of their employees from a HUBZone.

SBA Revisions to the HUBZone Regulations. On February 10, 2000, SBA provided a staff briefing on a prospective rulemaking to revise the HUBZone program. (This discussion also included the question of the 8(a) program's automatic preference over the HUBZone program, although that turned out to be a matter of interpretation of existing rules rather than a new rulemaking.) The new rules would delete the existing restrictions on affiliates with HUBZone firms, clarify the relationship of the HUBZone program to State and local procurement programs, revise the definition of "principal office," and provide for limited participation by retail firms notwithstanding the non-manufacturer rule. Chairman Bond wrote SBA Administrator Aida Alvarez in support of eliminating the affiliation requirements on February 16, 2000, in addition to

disagreeing with SBA's views on the 8(a) preference relative to the HUBZone program. Administrator Alvarez responded February 25, 2000, agreeing to remove the affiliation restriction but continuing to disagree on the HUBZone/8(a) parity matter.

On September 19, 2000, Chairman Bond spoke about the affiliation provision on the Senate Floor, as part of a general speech on HUBZone implementation. He noted that seven months had elapsed since the February staff briefing, yet the regulations had still not been proposed. Congressional Record, September 19, 2000, at S8732-34 (see especially S8734).

SBA published the proposed rules in the October 3, 2000, Federal Register, at 58963, with public comment due on November 2. Chairman Bond submitted comments in support of the new rules on November 1, 2000, and Administrator Alvarez sent an acknowledgment letter on November 13.

Training of Federal Employees and Contracting Officers. Following frequent reports that contracting officers for various agencies were not carrying out the HUBZone program due to lack of training or direction from their agencies, Chairman Bond sent a circular letter to 15 agencies, covered by the HUBZone Act as amended, that did more than \$1 billion in contracting in Fiscal 1999, according to the Federal Procurement Data Center. The July 24, 2000 letter asked specific information about what agencies had done to train their contracting staff, what role the agency Offices of Small and Disadvantaged Business Utilization (OSDBU) played in that function, and where the OSDBU was located on the agency organization chart. The 15 agencies receiving this letter were: the Departments of Agriculture, Air Force, Army, Commerce, Defense, Energy, Health and Human Services, Justice, Navy, Transportation, and Veterans Affairs (VA), the Defense Logistics Agency, the Environmental Protection Agency, the General Services Administration, and the National Aeronautics and Space Administration (NASA). The Air Force and the VA sent the most comprehensive responses to the letter, while NASA's response indicated serious deficiencies.

On October 17, 2000, Chairman Bond wrote NASA Administrator Daniel Goldin concerning the agency's failure to act on the HUBZone program and its failure to train its contracting staff. The letter mentioned a further example of failure to train contracting staff: a specific case in which NASA, by its own admission, had improperly handled a contract under the Small Disadvantaged Business program and had taken no corrective action. Chairman Bond called on NASA to prepare a corrective action plan and to report monthly on implementation of that plan. Chairman Bond stated that his goal was to have all NASA contracting staff trained properly by the end of Fiscal 2001. NASA Associate Administrator for Legislative Affairs Edward Heffernan responded briefly on November 13, 2000, but did not provide a corrective action plan. However, NASA did commit to a "mandatory, centrally-administered training requirement" and to making "periodic status reports." By the end of the calendar year, NASA had still not submitted either a corrective action plan or a monthly report for December 15.

In a related vein, on October 9, 2000, the Federal Times published an article by SBA's Acting Associate Deputy Administrator for Government Contracting and Minority Enterprise Development,

Kerry Kirkland, announcing a series of training seminars for the HUBZone program. Chairman Bond wrote a letter-to-the-editor to the *Federal Times* on October 25, 2000, calling on agencies to take full advantage of SBA's training sessions "if they would like to avoid oversight scrutiny." Chairman Bond's letter was published in the *Federal Times* on November 13, 2000.

I. OTHER GOVERNMENT CONTRACTING ISSUES

1. Department of Energy small business contracting

The Committee continued its oversight of the Department of Energy's (Department) small business program, especially concerning the Department's reporting of small business subcontracts by certain contractors as if they were prime contract awards by the Department itself. The Department relied on permission granted to it in a 1991 letter from the Office of Federal Procurement Policy (OFPP) in reporting subcontracts by its Management and Operating (M & O) contractors as if they were small business achievements by the Department. Moreover, the Department sought to treat subcontracts by its Management and Integration (M & I), and Environmental Restoration and Management Contract (ERMC) contractors in the same manner, arguing that the logic of the 1991 OFPP letter applied to M & I and ERMC contractors as well as the M & O contractors that were the subject of that OFPP letter.

Chairman Bond contended, however, that the rationale behind the OFPP letter no longer existed. At the time of the letter, the Department had a much closer relationship with its M & O contractors, and it was arguable that the M & O contractors were in practice surrogates for the Department itself. Since the early 1990s, the Department had revised its regulations substantially to distance itself further from the M & O contractors. Thus, the M & O contractors no longer acted as surrogates for the Department, and the reporting of M & O subcontracts as prime contracts needed to stop in recognition of current practices. Further, this approach could not be applied to the treatment of subcontracts awarded by M & I and ERMC contractors without approval from OFPP, since those contracts were not the subject of the 1991 letter. It would make no sense to extend this treatment to M & I and ERMC contractors, however, if it no longer applied even to the M & O contracts that prompted the original policy.

On March 2, 1999, Energy Secretary Bill Richardson submitted the Department's proposed small business contracting goals for Fiscal 1999 (already well underway) to SBA Administrator Aida Alvarez. The goals included subcontracts awarded by M & O, M & I, and ERMC contractors as part of the agency's prime contracting goals. Administrator Alvarez responded on May 28, 1999, directing that the Department apply these subcontracts toward the Department's subcontracting goals, not its prime contracting goals.

On August 11, 1999, the Department submitted another letter to Administrator Alvarez restating its position and calling for her to appeal to OFPP if she continued to disagree. Chairman Bond then filed his complete brief on the matter with OFPP on September 15, 1999, to provide his point of view. The letter was also signed by Ranking Member John Kerry. Finally, SBA sent a formal appeal letter to OFPP on October 7, 1999.

On November 3, 1999, OFPP issued a decision letter. OFPP Administrator Deidre Lee directed that subcontracts awarded by M & O, M & I, and ERMIC contractors be reported as subcontract awards, not as Department prime contract awards. This change would take effect with the goals for Fiscal 2000, since Fiscal 1999 had concluded.

A staff briefing on January 10, 2000, indicated that SBA was encountering difficulties achieving a 23% Government-wide contracting goal, as required by the Small Business Act. The change in the Department of Energy's reporting of these site and facility contracts caused an apparent drop in the Department's small business participation, since subcontracts to small businesses were no longer permitted to be reported as if they were prime contracts made by the Department. SBA indicated they were having difficulty negotiating increased goals for the other agencies to make up for the decline, and sought the Committee's guidance.

On February 1, 2000, Chairman Bond wrote SBA Administrator Aida Alvarez, saying that SBA needed to find ways to reach 23%, since that goal was statutory. He was unable to offer a "waiver" from statutory requirements. On February 9, 2000, Administrator Alvarez responded that 23% was indeed mandatory, and saying that the Department of Energy, and other agencies, had received challenging goals to achieve the 23% level.

The Committee continued to track the Energy Department's efforts to improve its contracting with small business during 2000. On February 10, 2000, Senators Bond and Kerry wrote Energy Secretary Bill Richardson, calling on him to review whether small business teams might be able to handle some of the smaller site and facility management contracts. The letter also urged the Secretary to contact the existing contractors to remind them of their obligations to subcontract to small business. Secretary Richardson responded on April 4, with a discussion of various initiatives underway to improve small business participation.

A staff briefing on October 5, 2000, suggested that adoption of a three-year plan for improving the Department's performance, as part of the Department's annual report to the Congress, would be helpful in giving direction to the Department's efforts. On December 13, 2000, Senators Bond and Kerry wrote Secretary Richardson again, encouraging the Department to prepare and submit such a three-year plan. In addition, the letter included several questions concerning the Department's site and facility contracts that were renewed during Fiscal 2000. A response was still pending at the conclusion of the 106th Congress.

2. Department of Defense authorization

During Senate consideration of the National Defense Authorization Act for Fiscal 2000 (S. 1059), the Small Business Committee was informed of a pilot program in the Armed Services Committee-reported bill that could have grave effect on small business participation in certain contract opportunities. Section 805 of the bill proposed to extend commercial acquisition practices, currently available for procurement of commercially available products, to procurement of certain services on a pilot program basis.

The Small Business Committee has been concerned with commercial acquisition practices in the past, often because they result

in contracts being awarded without reaching out to small business to encourage their participation (e.g., through small business set-asides). This concern must be balanced by understanding that commercial acquisition has benefitted some small businesses by allowing the Government to purchase products as if it were any other consumer visiting a store (i.e., finding what is available and buying that) without demanding that the product be made to conform to special standards unique to the Government and irrelevant to other consumers. Not having to tailor their products to the Government has made some small businesses able to sell their products at lower cost to the taxpayer. However, this logic is not likely to apply in the acquisition of services, rather than products. Accordingly, the Small Business Committee was concerned that commercial acquisition of services would result in all the harm to small business of commercial acquisition practices while delivering none of the benefits.

With Ranking Member John Kerry, Chairman Bond filed an amendment (S. Amdt. 401) on May 26, 1999, to strike all of § 805. Ultimately, Chairman Bond agreed to a compromise amendment (S. Amdt. 440) that would exclude these commercial services acquisitions from streamlined acquisition procedures under the Clinger-Cohen Act, thus lessening the possibility that the pilot program would become yet another means of bypassing the small business program in procurement. Senator Kerry joined this amendment, which Armed Services Committee Chairman John Warner offered on behalf of Senators Bond and Kerry, and the amendment was agreed to by unanimous consent, as part of a package of amendments considered en bloc on May 27, 1999.

During conference committee consideration of the bill, Senators Bond and Kerry sent a letter on July 30, 1999 to Armed Services Chairman Warner and Ranking Member Carl Levin. The letter recounted the events leading up to the adoption of the Bond/Kerry amendment on the Floor and urged inclusion of that language in the conference report. Alternatively, the Senate could recede to the House and drop the commercial services pilot entirely.

Ultimately, the conference report removed all of the Bond/Kerry language and further eliminated, from the report on the pilot program to be made to the Congress, any study of the pilot program's impact on small business. This provision was adopted as § 814 of the conference-reported bill.

3. Contractor responsibility (*"blacklisting"*) regulations

On July 9, 1999, the agencies that jointly promulgate the Federal Acquisition Regulation (FAR)—the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration—published a proposed rule in the Federal Register expanding the meaning of "contractor responsibility" in the FAR. The FAR requires that only contractors deemed "responsible" may participate in Federal procurement. Under the proposed rule, contractors that do not comply with Clinton Administration policy on labor, employment, environmental, antitrust, consumer protection, or tax laws would be deemed non-responsible and would be effectively barred from Federal procurement. Chairman Bond filed comments opposing the proposed rule on November 12, 1999.

4. *Contract bundling*

On May 18, 2000, the General Accounting Office (GAO) released a report on contract bundling, stating primarily that insufficient data were available on the extent and small-business impact of the practice. Chairman Bond wrote SBA Administrator Aida Alvarez, noting the GAO's finding that the Federal Procurement Data Center was waiting on SBA to issue the final contract bundling rules before modifying their data collection procedures to gather the bundling data required under the Small Business Reauthorization Act of 1997. He also noted the need to hire and train sufficient Procurement Center Representatives (PCRs) to carry out the statutory review of bundling. Chairman Bond also noted that SBA had identified 42 cases of possible bundling that were still unresolved, according to GAO.

On June 1, 2000, Administrator Alvarez responded that SBA had submitted the final contract bundling rules to the Office of Management and Budget for final clearance. She noted that, on May 9, SBA had announced its intention to hire 13 additional PCRs.

On June 16, Chairman Bond wrote Administrator Alvarez to inquire about the 42 unresolved bundling cases mentioned in the GAO report, which Chairman Bond had mentioned in his May 18 letter. On June 28, SBA Deputy Associate Administrator for Government Contracting and Minority Enterprise Development James Ballentine responded that only 13 cases remained unresolved and that SBA expected to close out those cases within 90 days.

On July 26, 2000, SBA published its final contract bundling regulations in the Federal Register, at 45831–35.

5. *Inspector General audit of the Small Disadvantaged Business Program*

On June 30, 2000, SBA's Office of Inspector General released an audit of the Small Disadvantaged Business (SDB) certification program. Under that program, other Executive agencies transferred funds to SBA to certify firms for the SDB minority business contracting program. The audit found that SBA had improperly charged \$3.0 million in expenses to the SDB certification program, and that SBA could not produce justification for charging an additional \$3.2 million to the SDB program.

On June 29, the day before the audit was released, SBA Administrator Aida Alvarez had promised the funds would be returned to the agencies that provided them. On June 30, the day the IG audit was released, Chairman Bond wrote Administrator Alvarez to ask specifically how much she planned to refund and how those funds would be distributed among the contributing agencies. On July 18, Administrator Alvarez responded that she planned to refund \$3.9 million. She wrote Chairman Bond again on August 4, indicating that the refunds had been made on July 27, and that the amount refunded had been \$4.1 million, because of additional funds that had previously been obligated but not expended.

6. *Department of Commerce Office of Small and Disadvantaged Business Utilization (OSDBU)*

The Department of Commerce provided staff briefings on June 8 and 22, 2000, concerning a proposed reorganization that would change the reporting relationship for the Commerce Department

OSDBU. The proposal was said to be a lateral change, in that OSDBU would not move further down the organization chart, but would simply report to a different person. Further, under both current and proposed practice, OSDBU would report directly to the Deputy Secretary for policy purposes, as the Small Business Act required; the change would alter the reporting relationship for budget and administrative purposes.

On June 30, 2000, Senators Bond and Kerry wrote Office of Management and Budget Director Jacob Lew to urge that he reject the proposed reorganization. It was not necessary to resolve whether the change was in fact a reduction in stature for the OSDBU. Even if it were a lateral move, it would still not be in compliance with the Small Business Act, which did not contemplate a bifurcated reporting relationship. Further, budget and administrative matters are inherently policy matters, since a policy initiative that is not funded does not really exist. Senators Bond and Kerry called on Director Lew to terminate the bifurcated reporting relationship, as contrary to the Small Business Act and the President's Executive Order 12928.

On August 7, 2000, Director Lew responded that the Commerce Department had withdrawn its proposed reorganization. He also said that he had asked the Department to review its existing organization to ensure compliance with both the Small Business Act and Executive Order 12928.

7. Office of Federal Procurement Policy subcontracting guidance

On March 30, 1999, the Office of Federal Procurement Policy (OFPP) provided the Small Business Committee an advance copy of a proposed policy letter, to give guidance on subcontracting opportunities and plans. OFPP solicited comment on the draft letter. Chairman Bond filed a short comment on May 18, 1999, urging that the letter be revised to reflect subcontracting policy changes being developed for the new HUBZone program. The draft policy letter had omitted discussion of the HUBZone program-related changes.

J. ADDITIONAL OVERSIGHT ISSUES

1. Travel by SBA employees

On June 25, 1999, the Committee requested all travel documents for SBA employees GS-14 and above for travel during Fiscal Year 1998 and through the date of the letter for Fiscal Year 1999. Committee staff reviewed the documents and examined the relevant laws, regulations and standard operating procedures that govern travel expenditures at the SBA. The preliminary results of that effort were troubling.

Members of the Committee assisted greatly in studying the documents and the travel policies of SBA. Initially Senator Coverdell's efforts resulted in concerns raised about the travel practices at SBA. In particular, Senator Coverdell was concerned about the practice of self-approval and self-authorization of travel by senior agency personnel with only minimal oversight. In addition, Senator Coverdell was concerned about the practice of using advance teams to advance the extensive travels of the SBA Administrator Aida Al-

varez. With the sudden death of Senator Coverdell, Senator Enzi continued to probe the issues raised by Senator Coverdell.

Given the importance of the concerns raised by both Senator Coverdell and Senator Enzi, that Chairman Bond felt it necessary to assist Senator Enzi in his efforts to gain a better understanding of SBA travel practices. Among the issues raised by Chairman Bond and Senator Enzi were the use of an agency hired limo service to provide home to work service, expenditures by the SBA for makeup and hair care service for the Administrator and the expenditures of a senior SBA employee whose travel documents were not provided to the Committee despite repeated requests. The SBA has implemented new procedures to reduce the risk of fraud or abuse, but the Committee still has not completed all aspects of its review and intends to complete it in the 107th Congress.

2. Computer security

In response to an audit finding that there was very little in the way of appropriate computer security policies and procedures in use at the SBA, Chairman Bond wrote to Administrator Alvarez to express his concern and requested that the SBA report to the Committee on a monthly basis its efforts to comply with the recommendations of the auditors. That effort is ongoing.

The Committee has also worked with the IG at the EPA to address the EPA's lack of attention to protection of agency computers from computer hackers. In particular, the EPA lacks any formal Internet "firewall" that would provide some level of protection of agency computers. The Committee is monitoring the EPA's efforts to rectify this important problem.

3. Million Mom March

On July 6, 2000, Chairman Bond wrote SBA Administrator Aida Alvarez with a series of questions concerning her use of SBA resources to promote the Million Mom March on gun control. Administrator Alvarez had sent Administrator's Memo No. 423 of May 12, 2000 to agency employees to provide information on the march. It included material prepared by March organizers that encouraged readers to register. Chairman Bond inquired about the ethics of using Government resources to benefit an outside organization, particularly on a subject that had nothing to do with small business.

On July 28, 2000, Administrator Alvarez responded that the Government resources used to promote the Million Mom March were de minimis.

III. SMALL BUSINESS REGULATORY ISSUES

A. OSHA'S PROMULGATION OF AN ERGONOMICS STANDARD

By far the dominant source of activity was responding to the Occupational Safety and Health Administration's efforts to promulgate a regulation on ergonomics. This generated a variety of activities and concerns.

1. Small Business Regulatory Enforcement Fairness Act (SBREFA) panel

On March 2, 1999, a panel was convened as mandated by SBREFA to explore the impact of this regulation on small businesses. The draft of the proposal had been released on February 19, 1999 in preparation for the Panel's review.

The Panel was chaired by Marthe Kent of OSHA and consisted of Jere Glover, Chief Counsel for Advocacy from the Small Business Administration; Don Arbuckle, Acting Administrator Office of Information and Regulatory Affairs at Office of Management and Budget; Joseph Woodward, Associate Solicitor for Occupational Safety and Health, Department of Labor; and Robert Burt, Senior Economist from OSHA. In addition, 20 small entity representatives (SERs) representing a wide variety of industries that would be covered by the regulation were invited to participate in the process by providing direct input to the Panel on how this regulation would impact their businesses, and the problems they anticipated from attempting to comply with it.

The Panel held teleconferences with the SERs on March 23, 24, and 25, during which the Panel and the SERs were able to discuss different provisions of the proposal and their impact. The three different teleconferences were necessary so that all SERs could have a chance to participate and express their views fully. After the teleconferences, 15 of the 19 SERs who participated submitted written comments describing their views on the draft proposal.

The SERs raised many specific concerns with the draft proposal. Among these were: whether a regulation is necessary given the reduction in recent year of reported musculoskeletal disorders (MSDs); whether an employer was in the best position to determine whether an MSD was work related—many felt this determination should be made by a medical professional; and whether OSHA had seriously underestimated the costs of implementing the proposal including the costs for developing a program, training, conducting job hazard analyses, controlling jobs, covering medical management, implementing the medical removal protection provisions, and using outside consultants. The SERs also pointed out their inability to pass on these costs, and some mentioned that this could lead to companies relocating outside of the United States, or being less able to compete with foreign companies.

The medical removal protection (MRP) provision was especially criticized by the SERs. Under the draft proposal this would require employers to provide, for up to six months, an employee with 100% of their take home pay and full benefits if they must take leave to recuperate from a work related MSD. This provision caused many SERs to be concerned because it will be in addition to the coverage provided by their normal workers' compensation for which they are already paying premiums. Many SERs felt this would lead to fraud and abuse by employees since there is no objective way to establish whether an MSD exists, or to measure its severity.

Another provision that drew extensive criticism was the "one injury trigger" which specified that if one employee reported a work-related MSD, then the employer would be required to implement the full ergonomics program for any "similar jobs." Many SERs raised concerns about how to determine whether a job was similar to one associated with an MSD, and whether this meant that a

company could be forced to implement the full program based on one injury which might have been caused by factors not part of the workplace.

Many SERs also pointed out that they felt this regulation would lead to greater selectivity in hiring practices that would favor those who would be less likely to incur an MSD or trigger compliance with the regulation.

A report from the Panel was issued on April 30, 1999, which contained the concerns as expressed by the SERs. Although the report also disputed the validity or merits of those concerns, or assumed the best case scenario which would mute these concerns, it recommended various ways that OSHA should respond to the SERs' comments: OSHA should consider alternatives to the MRP; OSHA should clarify various terms of the standard such as "similar jobs," "feasibility," and personal protective equipment; OSHA should re-examine their cost estimates in light of SER comments regarding the number of hours required to implement the program, the training requirements, the use of consultants, the MRP requirements, job hazard analysis, and job control; OSHA should discuss their assumptions underlying the benefits estimate; and OSHA should clarify when employers have done enough to satisfy the standard.

The report also discussed alternatives to the draft proposed regulation and recommended that OSHA solicit comments on alternatives such as: non-regulatory guidance; issuing only a Safety and Health Program Standard; waiting until the National Academy of Sciences study on whether there is sufficient evidence to support a regulation is issued; changing the trigger of the regulation from the one injury in the draft proposal; changing the scope to cover only manufacturing jobs; and exploring further whether to include the MRP provisions and how best to include them if they are retained.

When released, the report also included all written comments submitted to the Panel by the SERs.

2. National Academy of Sciences study on musculoskeletal disorders and the workplace

a. Initial contact with the study

Included in the Omnibus Spending measure passed by Congress and signed by the President at the end of the 105th Congress for Fiscal Year 1999 was \$890,000 for the National Academy of Sciences (NAS) to conduct a literature review to determine whether the scientific studies provide adequate data to support a regulation on ergonomics in the workplace. These funds were appropriated to the Department of Health and Human Services along with a list of seven questions that the study was to address.

The seven questions were as follows: (1) What are the conditions affecting humans that are considered to be work-related musculoskeletal disorders; (2) what is the status of medical science with respect to the diagnosis and classification of such conditions; (3) what is the state of knowledge, characterized by the degree of certainty or lack thereof, with regard to occupational and non-occupational activities causing such conditions; (4) what is the relative contribution of any causal factors identified in the literature to the development of such conditions in the general population, specific indus-

tries, and specific occupational groups; (5) what is the incidence of such conditions in the general population, specific industries, and specific occupational groups; (6) does the literature reveal any specific guidance to prevent the development of such conditions in the general population, specific industries, and specific occupational groups; and (7) what scientific questions remain unanswered, and may require further research, to determine which occupational activities in which specific industries cause or contribute to work-related musculoskeletal disorders.

The contract that was executed between the National Institute of Occupational Safety and Health (NIOSH—an agency within the Department of Health and Human Services) and the NAS contained the following six tasks as the scope of work: (1) an assessment of the medical and biomechanical literature describing the load response relationships and their consequences for musculoskeletal structures; (2) an examination of the contribution of the medical and behavioral science literature to understanding links between musculoskeletal disorders and job characteristics, organizational factors, non-work-related activities, and variations; (3) an evaluation of existing core data sets characterizing the patterns of incidence occurrence in the workplace; (4) an evaluation of the state of knowledge on prevention strategies; (5) an examination of likely effects of changes in work and the workforce on the incidence of musculoskeletal disorders; and (6) recommendations for research.

The first meeting of the Panel convened for this study was held on May 10, 1999, and included remarks from staff representing the offices of Chairman Bond, Senator Jeffords, Senator Nickles, and Congressman Bonilla. In their remarks the Congressional staff emphasized Congress' intent that this study be a *de novo* review of the literature and that this study should adhere to the most stringent standards of scientific review.

In 1998, NAS conducted a workshop on Work Tasks and Musculoskeletal Disorders which attempted to survey the scientific literature and assess the strengths and weaknesses of it. It was a hastily arranged and non-scientifically rigorous effort which merely clouded further the question of what the scientific literature says on this subject. NIOSH had also conducted a literature review in 1997, but this did not examine the studies under sufficiently critical criteria such as evaluating the weight of the evidence supporting each study.

A follow up letter to the May 10 meeting was sent to the NAS on May 28, 1999, which reiterated the concerns expressed at the meeting as well as elaborating on the specific reasons why previous studies should not be considered as starting points for this study. The letter also sought to "ensure that the six tasks outlined in the Panel's statement of work are designed to address each of the seven questions delineated in the report accompanying last year's House-passed Labor-HHS Appropriations bill." This letter was signed by Senators Bond, Nickles, Enzi, and Congressmen Talent, Blunt, Bonilla, Goodling, DeLay, and Ballenger.

The NAS responded with a letter dated June 18, 1999, which committed the NAS to conducting a "comprehensive and critical evaluation of disparate data bases and studies * * * according to criteria adopted by the study committee." The letter also stated

that “you can be assured that our project is focused on the seven questions that were raised in your original letter. We have sought to design the study to address the needs in your original letter, as well as the legislation, and we appreciate your continued input concerning Congress’ intent for this study.” NAS also promised to “keep your staff apprised of all aspects of this project on a regular basis. * * *” The letter was signed by Drs. Alberts and Shine, the President of the NAS and the President of the Institute of Medicine, respectively.

b. Follow-up contact with the study

On March 15, 2000, a second letter to NAS was sent from Chairman Bond with additional signatures from Congressmen Blunt and Bonilla. This letter expressed dismay that the NAS had not fulfilled its commitment to keep the Congressional offices “apprised” of developments of the study as there had been absolutely no contact since the letter of June 18, 1999. Because the meeting format for the Panel does not allow outside observers into the sessions where the literature reviews are discussed, there is no way to determine whether NAS’ efforts are on track with Congress’ intent.

This second letter also criticized the NAS for pursuing a study that was inconsistent with the seven questions specified by Congress when it appropriated the money for the study. A Congressional Research Service analysis was included that identified discrepancies between the seven questions as posed by Congress and the six tasks that comprised the statement of work for the contract. The letter requested a detailed oral briefing from the NAS staff about how they were addressing these concerns and for NAS to provide full documentation describing the project and all committee meeting minutes.

A meeting was held on April 5, 2000, attended by staff from the offices of Senators Bond, and Nickles, and Congressman Bonilla, as well as the following staff from NAS: Jim Jensen (NAS/National Research Council), Andrew Pope (Institute of Medicine), Alexandra Wigdor (NAS), and E. William Colglazier (NAS/National Research Council). During the course of this meeting, the NAS representatives confirmed that the study is being conducted in accordance with the six tasks as enumerated in the statement of work, but that the seven questions identified by Congress are being “kept in mind” and that in the final report these questions will be “recognizable.” NAS also conceded that the contract was executed without giving Congressional offices an opportunity to review it and determine whether it was consistent with the legislative mandate. NAS further indicated that the literature reviews are being performed in a number of cases by reviewers that have been “commissioned” by the Panel and who have not been screened for bias or prior history of involvement in this issue. These reviewers were selected by members of the Panel because they were known to be “experts.” Furthermore, the criteria by which the studies are being reviewed is not available to the public, but will be included in the final report and is subject to the peer review that the report will undergo before being published.

c. HHS OIG audit

Also on March 15, 2000, a different letter was sent to the Office of Inspector General at the Department of Health and Human Services requesting an inquiry into whether the funds that had been appropriated were being spent consistent with Congressional intent, and whether the NAS was being responsive to its legislative mandate.

A meeting was also held on April 11, 2000, with staff from the Office of Inspector General of the Department of Health and Human Services to brief them on the request that they inquire into how the appropriated funds are being spent. The OIG agreed to pursue the questions of whether the funds are being spent consistent with the legislative mandate and to conduct a review of NIOSH's oversight of this contract.

The results of this inquiry were transmitted to the Chairman in a letter dated January 3, 2001. The Office of Inspector General determined that although the tasks which form the work order for the contract between HHS and NAS are not the questions which Congress intended to be answered, those questions will be answered in the study. Therefore the funds appropriated for the study are being spent appropriately. Furthermore, while NIOSH's oversight of the committee's activities is less than might occur with other projects, this is largely because of the NAS's policy with regard to the involvement of sponsors and the Academy's desire to maintain its credibility by keeping sponsor involvement and input to a minimum. Therefore, NIOSH's oversight is appropriate under the circumstances.

d. Report of NAS panel on musculoskeletal disorders and the workplace, low back and upper extremities

On January 16, 2001, NAS delivered to members of Congress and relevant agencies, the final report from the panel. The panel concluded that a "clear relationship" exists between back disorders and tasks associated with work. It also concluded that work-related psychosocial factors such as stress, low job satisfaction, low decision latitude, and monotonous work are also associated with MSDs such as low back disorder and upper extremity disorders. Additionally, individual factors such as weight, age, and gender can play significant roles in determining whether a person is likely to develop an MSD. Significantly, there was also a dissent from the consensus by one member of the panel (a hand and wrist surgeon) who raised questions about whether studies dealing with carpal tunnel syndrome should have been included, and whether conclusions drawn from these studies were valid. The report also called for more research in areas such as exposure assessment, measures of outcomes and case definitions for epidemiologic studies, further quantification of the relationship between exposures and outcomes, as well as research into specific body and scientific discipline areas.

3. Legislative activities on ergonomics

a. S. 1070/H.R. 987

On March 4, 1999, Congressman Blunt (R-MO) introduced H.R. 987, The Workplace Preservation Act, which would stop OSHA from continuing its efforts to promulgate an ergonomics standard

until the NAS completed its study of the scientific literature. The bill was marked up out of subcommittee on May 19, 1999, and reported out of the Committee on Education and the Workforce on June 23, 1999. On August 3, 1999, the House passed H.R. 987 by 217–209.

Chairman Bond introduced a companion bill, S. 1070, The Sensible Ergonomics Needs Scientific Evidence (SENSE) Act on May 18, 1999 which has been referred to the Committee on Health, Education, Labor and Pensions. S. 1070 now has 48 cosponsors and has been the subject of three Dear Colleague letters as well as countless grass roots letter campaigns and constituent visits to Senate offices.

During the floor debate on October 7, 1999, to consider the Labor/HHS Appropriations bill, S. 625, Chairman Bond offered Amendment No. 1825 which was perfected by Amendment No. 2270 that would have prevented any funds appropriated to the Department of Labor from being spent by OSHA to promulgate or issue an ergonomics standard. The amendment survived a vote to table, but was subsequently withdrawn by the Majority Leader, Senator Lott, when it was clear that the Democrats would not permit a vote on it. At the time he withdrew the amendment, Senator Lott committed to bringing the subject of the amendment back to be voted on by the Senate on a piece of legislation that would pass before the end of the year. This never occurred. S. 1070 expired at the end of the 106th Congress.

b. Northup/Enzi riders to fiscal year 2001 Labor/HHS Appropriations Act

In the second session of the 106th Congress, Representative Anne Northup (R-KY) introduced an amendment to the Labor/HHS Appropriations (H.R. 4577) in the House Appropriations committee that would block the ergonomics regulation from being completed during Fiscal Year 2001. The amendment was accepted on a party line vote (32–22) and set the stage for a floor fight on the ergonomics rider. The Northup language survived a motion to strike offered by Representative James Traficant (D-OH) by a vote of 203–220. The Northup amendment would prevent OSHA from spending any funds “to promulgate, issue, implement, administer, or enforce any proposed, temporary, or final standard on ergonomic protection.”

With the successful amending of the Labor/HHS bill in the House, the focus was on whether the Senate could match this achievement. Because of Senator Specter’s support for OSHA’s ergonomics regulation, it was necessary to offer the amendment on the floor. Small Business Committee staff worked with leadership staff as well other Senate staff to develop the floor strategy and resources to pass an identical amendment on the Senate’s version of the Labor/HHS Appropriations Act.

Senator Enzi offered the amendment on the floor immediately after the bill was brought up on June 22. As the first amendment to the bill, the bill would not be allowed to move until the ergonomics amendment was voted on. Opponents threatened to filibuster the bill and offered various procedural maneuvers to push the debate into the late afternoon and evening. Finally, Senator Lott negotiated a compromise that allowed for a vote on the

ergonomics amendment and a vote on an amendment that would add a prescription drug benefit to Medicare. The ergonomics amendment was accepted 57–41 with all Republicans except Senator Specter and three Democrats (Sens. Hollings, Breaux, and Lincoln) supporting it. The language passed was identical to the language passed in the House which should have insured that the amendment would not be disturbed in conference.

Throughout the summer and into the fall the conference on the Labor/HHS bill continued to look for a compromise on the ergonomics issue as well as Administration requests for more funds. The Administration announced that the bill would be vetoed if it contained the ergonomics amendment. On October 30, a deal was announced that would allow the ergonomics regulation to be issued, but not take effect until June 2001. This deal was immediately killed by Republican leadership in both houses who recognized that this would give nothing to the Republicans. Soon after this deal fell through, Congress passed an extended continuing resolution to fund the government past the elections on November 8. With the extended resolution of the presidential election, further CRs were passed until the Labor/HHS bill was combined with the other outstanding appropriations measures (Treasury/Postal Service, and Legislative Operations) and passed on December 15, as Congress adjourned on the same day. The final total for the Labor/HHS bill was \$108.9 billion which included an increase of \$44 million for OSHA over the Fiscal Year 2000 appropriation. The final package contained no mention of the ergonomics issue at all. OSHA had published the final rule on November 14.

4. OSHA's notice of proposed rulemaking on ergonomics

a. Comments filed by Chairman Bond

On November 23, 1999, the week after Congress adjourned on Friday November 19, OSHA published their proposed regulation on ergonomics in the Federal Register. The full publication was 312 pages of which the last 12 were the proposed regulatory text. Initially, the agency set a deadline for comments to be received by February 2, 2000. After pressure from Congress led by Chairman Bond along with 61 other members of the Senate and House, and a widespread outcry from all sectors of industry, OSHA extended the deadline for comments to March 2, 2000.

The proposed rule required employers with manufacturing or manual handling jobs to implement some elements of the full ergonomics program regardless of whether any employees have reported any MSDs or any symptoms have been discovered. If an employee does report an injury in any general industry workplace, that employer must implement the full ergonomics program specified in the proposal or implement a modified program called a "Quick Fix." OSHA's proposal was heavily criticized by all sectors of the business community.

Chairman Bond submitted comments to the docket on the proposal which made the following points:

The proposal is riddled with vague terms such as "periodically," "promptly," "considerable physical effort," "feasible controls," "same motion over and over again," and "sitting for a long time." It also defines an OSHA recordable MSD as one where the "exposure at

work caused or contributed to the MSD or aggravated a pre-existing MSD.” This is inconsistent with current regulatory language at 29 CFR 1904 which defines a recordable injury as one which results in lost workdays or medical treatment without reference to work place exposure causing or contributing to the injury. The language relied upon by OSHA on this point has been taken from a 1996 proposal to revise the Recordkeeping Standard at 29 C.F.R. 1904 which has yet to be finalized.

Other problems with the proposal include the Worker Removal Protection (WRP) provision which requires employers to pay 90% of workers’ take home pay if they must take leave to recuperate and 100% of the take home pay if they are moved to lighter duty because of a work related MSD. Benefits are to be maintained at the full level in both cases and this coverage is to be available for up to six months (in the draft for the SBREFA panel, this provision was called medical removal protection (MRP)). Apparently, in response to the heavy criticism this provision received in the SBREFA report, the requirement for take home pay protection was reduced from 100% to 90%. This would be in addition to any benefits the employee receives through the worker’s compensation coverage.

This provision would create a tremendous financial burden on small employers and businesses in general. Although employers are permitted to balance this requirement against what an employee would receive under the available workers’ compensation benefits, workers’ compensation typically only provides two thirds of an employee’s salary up to a specified maximum amount. Furthermore, there is usually a waiting period of at least one week before an employee can qualify to receive workers’ compensation benefits. Under OSHA’s WRP provision, the employee is eligible as soon as they are placed on work restriction. Thus, employers will still have to provide substantial payments even if an employee qualifies for workers’ compensation. In addition, in many cases, the employer may also have to hire replacement help to fill the role vacated by the injured employee, adding to the overall cost of this provision.

The WRP provision singles out MSD injuries for benefits that no other injury would receive. Even such a debilitating injury as a broken bone would only qualify an employee for the standard workers’ compensation benefits, yet if an employee developed an MSD through activities outside of the workplace which was aggravated by his or her workplace activities, they could qualify to take leave and still receive 90% of their take home pay. This provision thus creates an enormous potential, and indeed, an incentive for fraud. It also makes this provision inherently unfair to other employees who may suffer more traditional, less lucrative injuries.

As a result, this provision appears to conflict with a requirement in the Occupational Safety and Health Act which prohibits OSHA from interfering with workers’ compensation programs. Section 4(b)(4) of the Occupational Safety and Health Act of 1970 states:

Nothing in this Act shall be construed to supersede or in any manner affect any workmen’s compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries,

diseases, or death of employees arising out of, or in the course of, employment.

Occupational Safety and Health Act of 1970, 29 U.S.C. § 653(b)(4), emphasis added.

OSHA is therefore exceeding its legislative authority by imposing the WRP provision which interferes directly with states' worker compensation programs.

b. Other correspondence on OSHA's proposed ergonomics regulation

On June 13, 2000, Chairman Bond sent another set of comments to OSHA criticizing the agency for not having included employees in the railroad industry, United States Postal Service, and state and local governments in the economic analysis for the regulation. The total number of employees was over 10 million. Furthermore, OSHA admitted that they relied on AFL-CIO data for the number of injuries suffered by employees in the state and local government sectors. These admissions by the agency were published in the Federal Register on May 23, 2000. Chairman Bond stated that these failures confirmed his belief that the agency was "clueless about the impact of the proposed ergonomics regulation" and called on Assistant Secretary Jeffress to withdraw the proposed regulation.

On June 16, 2000, Chairman Bond joined with Rep. Henry Bonilla (R-TX) and spearheaded a letter to Office of Management and Budget Director Jack Lew requesting that OMB conduct a thorough review of OSHA's cost estimates when the regulation is sent over for review before being issued as a final rule. The letter was signed by 47 other bipartisan senators and 166 other bipartisan members of the House.

5. Department of Labor Office of Inspector General review and General Accounting Office review of OSHA's use of contractors during ergonomics rulemaking

On May 9, 2000, Chairman Bond requested the Office of Inspector General (OIG) of the Department of Labor to review OSHA's use of contractors in the ergonomics rulemaking. Specifically, he posed the following questions:

—Is OSHA engaging contractor(s), or other third parties unrelated to the Executive Branch, to review the comments and testimonies submitted to the ergonomics docket (S-777), and if so how many?

—Has OSHA done this for other rulemakings, and if yes, which ones?

—If this is taking place for the ergonomics rulemaking, what quality controls and other checks are in place?

—How was the contractor(s) selected?

—What are the deliverables from the contract(s)?

On June 15, 2000, Chairman Bond expanded his request to cover whether OSHA had paid contractors to testify at their hearings and if so how much had these contractors been paid?

On September 20, 2000, staff from the OIG briefed staff from Chairman Bond on their findings. OSHA had engaged contractors to review the docket and develop software to catalog the comments submitted on the proposed ergonomics regulation. Contractors have been used in previous rulemakings to review and catalog com-

ments. OSHA staff were in close contact with the contractors to monitor quality of the software development and assure complete summarizing of the comments. Contractors were selected under a competitive bidding procedure, although those used for testimony were selected because of their expertise. The contractors selected to review the comments and testimony were required to deliver summaries thereof. Contractors selected to testify at the hearings delivered their statements. OSHA paid contractors to testify at the hearings on the following schedule: \$3000 to prepare testimony; \$5000 to present testimony; \$2000 to provide record analysis and posthearing review; total of \$10,000. The OIG also concluded that their “ability to assure a complete list [of contractors] is impaired because systems to control and summarize procurement actions related specifically to the ergonomics rulemaking are nonexistent.”

On June 29, 2000, Chairman Bond joined with Senators Jeffords, Thompson, and Enzi in requesting the GAO to review OSHA’s use of contractors and specifically expert witnesses at the hearings for the ergonomics regulation. Specifically, the requesters sought to learn:

—Whether OSHA directed witnesses on the drafting, content or presentation of their testimony, or participated in editing testimony, or preparing the witnesses to testify? What are the documented procedures OSHA has for working with witnesses regarding their testimony?

—What are the practices and standards regarding payment of contractors as witnesses for regulatory agencies? What types and amounts of payments (travel, per diem, other) does OSHA generally give to witnesses? How does this compare with the way OSHA paid their witnesses during the ergonomics hearings? How do OSHA’s practices during the ergonomics rulemaking compare with other agencies?

—What are the practices and standards of OSHA and other regulatory agencies regarding public disclosure of the fact that witnesses are paid by the regulatory agency? Did OSHA or its ergonomics witnesses disclose the fact that the witnesses were being paid by OSHA, as well as the amount being paid? To what extent do other agencies or their witnesses generally disclose this information?

This audit was delayed because of OSHA’s insistence on negotiating a confidentiality agreement preventing GAO from divulging specific information to the Congressional requesters. This audit is not yet complete because OSHA neglected to reveal the presence of documents submitted to them from the contractors such as drafts of testimony. Negotiations are also continuing on access to electronic mail messages that could reveal agency involvement in shaping testimony.

6. OSHA’s final ergonomics regulation

OSHA published its final regulation on ergonomics on November 14, 2000, notwithstanding that both houses of Congress had indicated with bipartisan majorities that OSHA should not finalize the regulation. The Administration was able to extend the negotiations on the ergonomics amendment to the Labor/HHS Appropriations Act long enough to allow OSHA to complete the regulation, notwithstanding questions about whether OSHA had given the com-

ments received on the proposal and testimony taken during five weeks of hearings sufficient consideration. Questions also remain about OMB's level of review. OMB never admitted to having the rule under review until after it was published as final rule. The notice in the Federal Register totaled 609 pages.

The final rule represented a dramatic departure from the proposed rule and is a much more burdensome and troubling regulation than the proposed rule would have been, even though that version would have been unacceptable. The most significant changes in the final rule versus the proposed rule were:

—The final rule covers all general industry employers which is essentially defined as all employers not in the construction, maritime, or agriculture industries. The proposed rule focused on jobs with manufacturing and manual handling characteristics, although any employer could be covered if an employee reported an injury. The final rule does away with the facade and sweeps every employer not otherwise excluded under the rule. This means an increase in the number of small businesses covered by the regulation.

—The final regulation includes a “screening tool” that employers are to use in determining whether an employee’s tasks present ergonomic risk hazards. This “tool” is a table of various body positions, weights and motions with the thresholds that OSHA has determined constitute a hazard in each case. If an employee is exposed at these threshold levels, they are said to have reached the “action triggers.” These thresholds do not represent any level of medical or scientific consensus, rather this table was taken directly from the Washington State ergonomics regulation which was developed by former OSHA ergonomics program director Barbara Silverstein. Significantly, this “screening tool” and the “action triggers” were never included in the proposed rule meaning that there was no opportunity to comment on this major provision in the final rule.

—Although the final rule attempts to clarify terms which were criticized as vague in the proposed rule, it merely substitutes new vague terms for the old ones. The proposed rule would have required employers to “eliminate hazards” or “reduce hazards to the extent feasible.” The final rule requires employers to “control” “hazards” until they are no longer “reasonably likely to cause” injuries, “reduce” “hazards” to extent feasible, or “reduce” “hazards” to strict quantitative levels mandated by regulatory appendix. Because there is no way to reliably know what “reasonably likely to cause” means, employers will be forced to default to the quantitative thresholds contained in the “screening tool” which lack any scientific foundation.

—The Worker Removal Protection (WRP) provision was modified so that an employer now must provide an employee 90% of take home pay to recover from an injury, but only for 90 days instead of the proposed six months. This still raises the same questions as the proposed provision with respect to conflicting with the OSH Act’s prohibition on interference with state workers’ compensation laws.

—The grandfather clause was streamlined so that employers have a year to implement the MSD management provisions which include the WRP requirements. This was done ostensibly so that more employers could qualify for the grandfather clause, thus re-

ducing opposition to the regulation. However, to qualify, employers will still need to have OSHA's program in place, instead of a program they may now be using.

—The final regulation will still be triggered by symptoms reported by employees which were not caused by workplace exposure. Under the proposed rule, the regulation was triggered by an “OSHA recordable” injury which was defined to include any injury that was caused by workplace exposures, contributed to by workplace exposures, or a pre-existing injury which was aggravated by workplace exposures. Under the final rule, this definition has been moved from that of a “recordable injury” to that of “work related” and the aggravation level for a pre-existing injury has been modified to be “significantly” creating more vagueness in the regulation.

This regulation has triggered extreme criticism from all sectors of the business community. Immediately upon its issue legal challenges were filed and over 60 parties have joined the litigation. Organized labor has also challenged the regulation charging that it is not protective enough since it requires an employee to report symptoms before an employer must implement the full ergonomics program, as compared to other OSHA standards that require protective measures to be taken before an injury is apparent. In addition to the litigation, a challenge in Congress is expected under the Congressional Review Act which gives Congress to invalidate a regulation if both houses pass a joint resolution of disapproval and the president signs it. The Bush administration is also expected to consider undertaking a rulemaking to change or revoke the ergonomics regulation.

Chairman Bond issued a statement describing the regulation as a “monument to regulatory excess” and predicting that it will “devastate small businesses.” He also issued a statement supporting the legal challenges that have been filed.

The final rule took effect on January 16, 2001, just before the Clinton Administration was concluded.

B. S. 1156, “SMALL BUSINESS ADVOCACY REVIEW PANEL TECHNICAL AMENDMENTS ACT OF 1999”

The Small Business Regulatory Enforcement Fairness Act (SBREFA) was passed in 1996 to provide small businesses with an opportunity to provide more input into the regulatory rulemaking process. The signature provision of SBREFA requires the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) to convene panels with representatives from the agency, the Small Business Administration's Office of Advocacy, and the Office of Management and Budget's Office of Information and Regulatory Affairs. The panels then receive input from selected small entity representatives (SERs) who will be impacted by the regulation. For other agencies, SBREFA requires outreach to small businesses to solicit their input on the impact of the rule to their industries.

Since 1996, EPA had convened 14 panels and OSHA had convened three. As a result of these experiences, it became clear that some amendments to the process were necessary in order to enhance the ability of small businesses to participate in the panels. In addition, members of the small business community believed it would be beneficial to small businesses to have the IRS and the

Department of Treasury included as agencies that are required to convene review panels in addition to OSHA and EPA.

On May 27, 1999, Chairman Bond, with Senator Kerry as an original cosponsor, introduced the Small Business Advocacy Review Panel Technical Amendments Act of 1999 (S. 1156). The bill would require IRS to convene SBREFA panels in the same way as OSHA and EPA. It would also give the Chief Counsel for Advocacy a role in helping to select the SERs, and allow organizations that “primarily” represent small entities to serve as SERs.

S. 1156 was marked up and reported out of the Small Business Committee on a unanimous vote on July 15, 1999, after two amendments by Senator Wellstone were accepted. The amendments changed the role of the Chief Counsel for Advocacy to that of “consulting” in the selection of SERs, and specified that an organization must “primarily” represent small entities to qualify as an SER.

On September 28, 1999, S. 1156 was passed by the Senate under Unanimous Consent. A companion bill in the House, H.R. 1882 was reported out of the House Small Business Committee, but was never approved by the Ways and Means Committee which had jurisdiction because of the IRS issue.

S. 1156 was under consideration for inclusion in the SBA Reauthorization bill, but opposition to the IRS provisions kept it out and it died at the end of the second session.

C. SBREFA AND OTHER SMALL BUSINESS ACTIVITIES

1. Roundtable on SBREFA and Regulatory Flexibility Act issues

On March 10, 1999 the Small Business Committee staged a roundtable for interested parties to discuss issues related to the implementation of the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA), also known as the “Red Tape Reduction Act,” which amended the RFA. Twenty-eight representatives of small business interests participated in the discussion.

The agenda included discussions on: the coverage and applicability of the RFA/SBREFA, including agency interpretations of non-applicability and non-NPRM rulemaking; RFA/SBREFA components to agency rulemakings such as the Initial Regulatory Flexibility Analysis, Final Regulatory Flexibility Analysis, and SBREFA Panel Review process; judicial review of agency compliance with RFA/SBREFA; Section 610 periodic review of rules to determine if any changes are necessary to assist small businesses; agency responses to the compliance assistance requirements of SBREFA; and experiences with agency enforcement under SBREFA.

The transcript of the Roundtable was printed as S. Hrg. 106–292.

2. Agricultural issues roundtable in Kansas City, MO

The Senate and House Committees on Small Business held an agricultural issues roundtable entitled, “Building A Stronger Agricultural Community” in Kansas City, Missouri on August 24, 1999. Chairman Bond, the Chairman of the Senate Committee on Small Business, and Congressman Jim Talent, the Chairman of the House Committee on Small Business co-chaired the Roundtable. Twenty one representatives of agricultural interests participated.

The agenda included discussions on: tax issues critical to the agricultural sector; regulatory reform and the role of SBREFA and RFA in agricultural regulations with agencies like EPA, the Forest Service, and the U.S. Department of Agriculture; and ways to increase trade of agricultural products.

The transcript of the Roundtable was printed as S. Hrg. 106–456.

3. *B2B issues forum: B2B—An Emerging E-Frontier for Small Business*

The Senate Small Business Committee held a forum on May 18, 2000 to explore the use of electronic commerce for Business to Business transactions (B2B) and how this trend may affect small enterprises. In opening the forum, Chairman Bond raised three primary questions for the participants to address: How can small businesses take advantage of this trend?; What obstacles do small businesses face in trying to advantage of this trend?; and Is this trend a benefit or a problem for small businesses? He explained that the Committee's goal in holding this forum is to help the small business community better understand the opportunities that are becoming available through the use of the Internet and the computer revolution in general. Although many in the high technology industries are very familiar with these possibilities, many small businesses still lag behind and are unaware of how their businesses could benefit. Chairman Bond described the Internet as "the latest toolbox available" to help small businesses compete in the marketplace.

The forum consisted of opening statements from three panelists who described the Internet-based B2B trend, the range of its impact, the amount of small business participation, and how this technology can be adapted to help small firms. In addition to the three panelists, 20 invited participants, representing a cross section of small business and high technology interests, engaged in a discussion following the opening statements.

The transcript was printed as S. Hrg. 106–707.

4. *GAO study of SBREFA section 610 compliance*

On April 2, 1999, GAO released a study (GAO/GGD–99–55) on how agencies were complying with Section 610 of the Regulatory Flexibility Act which requires each Federal agency to develop a plan to review all of its existing rules within 10 years of the RFA and any new rules within 10 years of their implementation that have or will have a "significant economic impact on a substantial number of small entities." The review is to determine whether the rules should be continued without change or should be amended or rescinded to minimize their impact on small entities. Agencies are also required to publish an annual notice in the Federal Register of the rules they have designated for Section 610 review in the succeeding 12 months. This notice is often handled through the Unified Agenda of Federal Regulatory and Deregulatory Actions which appears each November and April in the Federal Register, although the RFA does not specify that this must be done in the Unified Agenda.

The report found that in the April 1998 Unified Agenda there were 61 Federal departments, agencies and commissions. Only seven agencies included a total of 22 Section 610 entries. Therefore,

54 Federal departments, agencies, and commissions had no Section 610 listings at all. Furthermore, only two of the 22 listings appeared to satisfy the requirements of Section 610. The results were similar for the November 1988 Unified Agenda. Only eight agencies out of 61 posted a total of 31 Section 610 entries, and only one was determined to actually satisfy the requirements. In addition, 21 of the 31 entries were determined to have appeared in the April 1998 Unified Agenda and had merely been updated for the November 1998 edition.

GAO documented how agencies have different interpretations of the requirements of Section 610. For example, agencies differ on whether they should conduct a Section 610 review of rules based on whether the rule had a significant economic impact on a substantial number of small entities at the time the rule was published, or at the time the review would have to be conducted. GAO recommended that Congress consider clarifying its intent in future legislation.

A follow-up symposium was conducted by GAO on February 1, 2000, to help agencies come to a more common understanding of the requirements of Section 610. The symposium revealed legitimate differences of opinion on how to interpret critical terms in Section 610. Terms in the Regulatory Flexibility Act such as “significant economic impact” and “substantial number of small entities” are wide open to interpretation and will determine what actions an agency takes. There was also wide disagreement among agencies about whether Section 610 requires a review of rules based on their impact at the time of publishing or after 10 years of implementation. Because the RFA does not establish any specific authority to resolve these different interpretations, agencies have been left to follow their own interpretations leading to widely different levels and styles of compliance.

5. EPA lead TRI inquiry

EPA’s Toxic Release Inventory (TRI) program requires entities to report use or release of certain chemicals beyond threshold amounts. On August 3, 1999, EPA proposed to reduce the reporting threshold for lead from 25,000 pounds per year to 10 pounds per year. The Small Business Committee met with representatives from the metal finishing and electronic circuit board industry who complained the rule would significantly affect their industries and that EPA had failed to conduct the required small business outreach to determine the rules’ impacts on small businesses and reduce its burden on small businesses while still meeting the rules’ environmental goals.

On September 8, 1999, Chairman Bond wrote EPA Administrator Browner expressing his concern that EPA failed to conduct the needed small business outreach and analysis mandated by the Small Business Regulatory Enforcement Fairness Act (SBREFA) and EPA’s own small business policy. The Senator urged EPA to conduct meaningful outreach to small businesses impacted by the rule and reconsider its SBREFA certification of no significant impact on any small businesses. Chairman Bond also encouraged EPA to extend the rules’ comment deadline to allow for meaningful outreach.

Further analysis of the proposed rule and its supporting economic analysis, and an almost complete lack of EPA action, confirmed EPA ignored its obligation to consider the rule's impacts on small businesses. On October 15, 1999, Chairman Bond wrote EPA Administrator Browner requesting that the Agency withdraw the proposed rule until the Agency gave proper consideration to the rule's impacts on small businesses. Chairman Bond scheduled a hearing for October 28, 1999, to explore EPA's failure to meet its SBREFA obligations in this case unless EPA withdrew the rule.

Preparations for the hearing included small business testimony, CRS analysis of EPA's failures, industry representative testimony and an invitation to EPA Administrator Browner on October 20, 1999. On October 22, 1999, EPA responded with an offer to conduct additional small business outreach. In a meeting with EPA on October 26, 1999, Small Business Committee staff expressed its concern that the input of small businesses impacted by the rule would not impact the rule unless EPA reconsidered its proposed rule.

On October 27, 1999, EPA agreed to extend the public comment period for two additional months, hold three small business stakeholder meetings in Los Angeles, Chicago and Washington, and reconsider its impact certification and proposed rule if the additional information and testimonies indicated this was warranted. As a result of these concessions, the Senator postponed the hearing indefinitely pending further Agency action on the proposed rule.

On October 28, 1999, Chairman Bond requested GAO conduct an investigation into the EPA's Office of Prevention, Pesticides and Toxic Substances which was responsible for developing the Lead TRI rule to examine its historic treatment of its SBREFA responsibilities. EPA expects to have alternative options to the Lead TRI rule by May 2000.

GAO concluded in its report (number GAO/GGD-00-193) that EPA's economic analysis was flawed, although still sufficient for EPA to rely upon it in certifying the regulation would not have a "sufficient economic impact on a substantial number of small entities." GAO determined that the regulation could have 1 percent gross revenues impact upon as many as 1,500 small companies, and as many as 78 companies, in 32 manufacturing SIC codes, could experience 3 percent gross revenue impacts from the rule. EPA's internal threshold for triggering SBREFA requirements is for a gross revenue impact of between 1 and 3 percent. EPA agreed that the rule will have a higher impact than originally projected, and high enough to otherwise trigger SBREFA requirements, but EPA has declined to conduct an Initial Regulatory Flexibility Analysis or convene a small business review panel.

In the interim, serious questions were raised about the science supporting EPA's rule suggesting that lead does not meet the definition of a persistent bioaccumulative toxic (PBT) chemical, which was the underlying reason for reducing the reporting threshold of lead so dramatically. These science questions have been raised by industry concerns who have suggested EPA refer the issue to the Science Advisory Board for an opinion. Notwithstanding these issues, on January 17, 2000, EPA published a final rule for reducing the reporting of lead under the TRI program. The threshold was reduced to 100 pounds and the issue of whether lead is a "highly bioaccumulative" toxic was referred to the Science Advisory

Board for further review. SBA's Office of Advocacy played a significant role in negotiating this outcome.

6. *FCC treatment of small incumbent local exchange carriers (ILECs) under the Regulatory Flexibility Act*

Chairman Bond, joined by Senators Brownback and Kerry, sent a letter on November 16, 1999 to Federal Communications Commission Chairman William Kennard, raising concerns that the Commission was not using an appropriate definition of a small business, and consequently was ignoring its obligation to conduct Initial Regulatory Flexibility Analyses before regulations affecting ILECs were proposed.

Chairman Kennard responded on January 12, 2000 that before issuing any proposed regulation, which requires a departure from the size standards specified by the SBA, they work closely with the SBA Office of Size Standards to come up with an appropriate definition. Chairman Kennard also claimed that since 1996 the Commission "has consistently addressed the impact of its rules on small ILECs in its RFA analyses."

7. *FCC treatment of small businesses in spread spectrum regulation*

On August 8, 2000, Chairman Bond and Senator Kerry sent a letter to FCC Chairman Kennard criticizing the Commission for the Initial Regulatory Flexibility Act used in the FCC's rulemaking to permit wide band frequency-hopping spread spectrum systems in the 2.4 GHz band. The letter criticized the FCC's IRFA for failing to state the purpose of the rulemaking, failing to identify an alternative approach that would minimize the impact on small businesses, and failing to discuss the nature and extent of the reporting requirements and professional skill necessary to satisfy them. The FCC also failed to examine the impact of the rule on the purchasers and users of this equipment. By offering such an inadequate IRFA, the FCC failed to give interested parties an opportunity to comment on the impact the rule will have on small businesses. Therefore, Senators Bond and Kerry requested that the FCC not finalize the rule until a proper IRFA was done and comments were taken on it. These positions and requests were consistent with comments filed by the Chief Counsel for Advocacy of SBA, and were also supported by the House Small Business Committee.

Chairman Kennard responded in a letter on August 25, 2000. The FCC's position was that the notice adequately described the purpose of the rulemaking even if the IRFA did not; alternative approaches were not necessary because this rulemaking would be beneficial to small businesses; and similarly, the rulemaking would not alter any recordkeeping requirements. The FCC noted that it had received over 200 comments on the rulemaking, including comments from small businesses enthusiastically supporting the rule change. Nevertheless, the FCC amended its Final Regulatory Flexibility Analysis to address the concerns raised by the Small Business Committees and the Office of Advocacy. In addition, Commissioners Susan Ness and Harold Furchtgott-Roth noted in their concurring opinion that the "Commission's IRFA in this proceeding was unquestionably terse." They recognized that the Commission should pay closer attention to the small business impacts of their

decisions: “We believe the Commission should recommit itself to a close examination of the issues raised by the Regulatory Flexibility Act. We have a statutory obligation to do so and the small business community deserves nothing less.”

8. *Small Business Committee hearing on the U.S. Forest Service’s treatment of small businesses*

On October 4, 2000, the Senate Small Business Committee held a hearing to examine the U.S. Forest Service’s approach to compliance with the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). The hearing was chaired by Senator Mike Enzi, who stressed that a growing pattern of Forest Service actions are shutting out small businesses from public lands and contributing to the destruction of rural communities. Senators Mike Crapo and Conrad Burns echoed the concern that the Forest Service has ignored the impact of its regulations and not followed the mandates of the Regulatory Flexibility Act.

The hearing featured four panels: the first panel consisted of Senators Craig Thomas and Larry Craig; the second panel was composed of representatives from industries that are directly affected by U.S. Forest Service actions: logging, timber mills, ranching, and outdoor guiding; the third panel featured two professors who have studied the impact of Forest Service actions on these industries; and the final panel consisted of James Furnish, Deputy Chief, U.S. Forest Service.

Senator Thomas noted that public lands were designed for both economic and recreational use, and these two interests should not be pitted against each other when they can coexist. He emphasized that local residents have been given no recourse to the mandates from Washington. In particular, the Forest Service’s Roadless Initiative was designed from the top down, contrary to all previous Forest Service policies and has resulted in a proposal that would be devastating to the local interests. Senator Larry Craig offered two conclusions from his experience of chairing the Forests and Public Land Management Subcommittee of the Committee on Energy and Natural Resources. First, the Forest Service is the single most important agency affecting small business interests in the western states, determining the future of small businesses in many cases. Second, there is not an agency in the Federal government that is less sensitive to the needs of small businesses.

The second panel consisted of four small business owners who have been adversely affected by Forest Service policies. Jim Hurst, President, Owens & Hurst Lumber Co., Inc., testified that big environmental groups and the large timber companies work together to influence the Federal government to lower timber harvest limits, which has severe implications for small timber operators. Since the large lumber companies harvest most of their timber on their own lands, they remain largely unaffected by decisions of the Forest Service. Joel Bousman, Cattle Rancher and Regional Vice President, Wyoming Stockgrowers’ Association, explained that if he loses his Forest Service grazing permit, he would probably have to sell his business, most likely to some type of developer, which would sacrifice the wild and unspoiled nature of the land that the Forest Service intends to preserve through its restrictions on grazing per-

mits. Del Tinsley, Owner/Publisher, Wyoming Livestock Roundup, and Advisory Board Member, University of Wyoming College of Agriculture stressed the need for an economic impact study, as opposed to an environmental impact study, to be conducted for each new rule and regulation that the Forest Service proposes. He asserted that the “unintended consequences” of these rules and regulations could be greatly reduced, and rural communities would not be destroyed. The final witness on the panel, Al Bukowsky, Owner/Operator, Solitude River Trips, described the adverse impact of the Forest Service’s manipulation of the permit process. He stressed that outfitters depend on camping permits in order to provide their recreational services. With Forest Service rangers closing down campsites and suspending river usage on as little as 12 hours notice, outfitting businesses are in serious jeopardy.

The third panel consisted of two academic experts on the effects of Forest Service rules and regulations on small businesses. Larry W. Van Tassel, Professor and Head of the Department of Agricultural Economics and Rural Sociology, University of Idaho, discussed a study he conducted that demonstrated that reducing Forest Service grazing permits for ranches leads to greater economic instability, lower profits, and job losses. The study also concluded that reduced grazing permits can increase the potential for the sale of the property to developers with ensuing loss of habitat for wildlife and other losses associated with converting natural land to developed land. William McKillop, Professor Emeritus, College of Natural Resources, University of California at Berkeley, discussed statistics demonstrating the decline of the timber industry in the West. He noted that this data shows that the decline disproportionately affects the small sawmills. The decline has also had a ripple effect, taking many other industries down with it.

The final panel consisted of James Furnish, Deputy Chief, U.S. Forest Service, who testified that the Forest Service regulations do not negatively affect small businesses. He asserted that the Forest Service takes pride in working with SBA’s Office of Advocacy to examine the effects of the agency’s regulations on small businesses. He also advanced that when local communities face hardship, the Forest Service is committed to helping them strengthen and diversify their economies through the wise, and more complete use of forest resources. Due to an objection to the Committee’s request to meet beyond the Senate’s two-hour limitation, the Committee was forced to adjourn the hearing without a full period of questioning for Mr. Furnish. Senator Enzi noted that the Committee would submit written questions to the Forest Service and asked that the agency’s responses be included in the hearing’s written record.

On January 12, 2001, the U.S. Forest Service published its final rule on Roadless Area Conservation which will establish prohibitions on road construction, road reconstruction, and timber harvesting in inventoried roadless areas on National Forest System lands. The Forest Service’s new regulations would impact just over 58 million acres of forest land and could threaten countless jobs, particularly in Western states.

Chairman Bond issued a press release describing the impact of the regulation on small businesses. Without logging companies taking out dead wood, fuel will accumulate, leading to another round of devastating forest fires. Additionally, the restriction on roads

and the access they provide to forest lands is expected to curtail use of the forests by river and tour guides, which play critical roles in helping people appreciate the natural wilderness as well as logging that sustains many independent small businesses. Ranchers, who depend on forest land to provide their herds alternate acreage for grazing, fear the new restrictions on roads ultimately will make it impossible to get permits for such grazing in the future. In that event, they say their private lands could not sustain year-round grazing for cattle and would likely force the sale of their property for other uses such as residential development.

When the regulation was proposed in May 2000, the Forest Service admitted that it would have a negative impact on a wide range of small businesses. At that time, the rule did not include the Tongass National Forest in Alaska, one of the largest national forests in the country. However, the Forest Service later decided to include the Tongass forest in the final rule, thereby increasing the number of small businesses that will be harmed by this regulation. The change could cost up to 400 jobs dependent on the Tongass and cut timber harvests there by 95 percent, according to Forest Service studies.

D. FEDERAL ACQUISITION REGULATION ON CONTRACTOR RESPONSIBILITY

On July 9, 1999, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration published a proposed rule that would amend the Federal Acquisition Regulation (FAR) to clarify coverage and give examples of suitable contractor responsibility considerations. In determining whether the contractor had a "satisfactory record of integrity and business ethics," contracting officers would be allowed to take into account examples such as "persuasive evidence of the prospective contractor's lack of compliance with tax laws, or substantial non-compliance with labor laws, antitrust laws or consumer protection laws. . . ." They would also be allowed to consider whether a contractor has "necessary workplace practices addressing matters such as training, worker retention, and legal compliance to assure a skilled, stable and productive workplace."

In response to many complaints from small businesses that would be affected, Chairman Bond submitted comments to the FAR Secretariat on November 12, 1999, opposing the proposed changes. The comments criticized the proposal for violating contractors' due process by allowing contractors to be debarred based on mere "persuasive evidence." This standard is not a legally recognized level of evidence and would give a contracting officer unbridled discretion. In addition, the FAR Secretariat wrongly claimed that the proposal would have no impact on small businesses and thus did not conduct an Initial Regulatory Flexibility Analysis as required by the RFA. Chairman Bond described the proposal as "not salvageable" and requested that it be withdrawn.

The Contractor Responsibility rule was re-proposed on June 30, 2000, with minor changes made to the original proposal. Under the second proposal, contracting officers would be required to follow a hierarchy in considering offenses and other evidence relevant to determining whether a contractor has a "satisfactory record of integrity and business ethics." While contracting officers are to give

“greatest weight” to decisions within the past three years, they would still be allowed to consider “all relevant credible information.” The re-proposal also contained an Initial Regulatory Flexibility Analysis (IRFA) in response to comments received on the first proposal, including those from Chairman Bond, who criticized the FAR Council for not conducting one.

Chairman Bond submitted comments on August 29, 2000, criticizing this second proposal as still being unfair to small contractors and calling for its withdrawal. He also pointed out how the IRFA was incorrectly conducted. In the IRFA, the FAR Council concluded that the regulation would not have “a significant economic impact on a substantial number of small entities.” This is the threshold for whether an IRFA should be conducted, and not a valid conclusion for the IRFA to reach. The FAR Council indicated that the regulation would affect approximately 171,000 small entities, but did not indicate what SIC codes these would be in, how this number was derived, or what the level of impact would be. Chairman Bond also reiterated his earlier criticism that this rule would deny contractors’ their due process by imposing a penalty before a contractor had exhausted its legal options. Because small businesses often have less resources to pursue legal resolution of citations, this regulation will result in more small businesses being penalized for citations than large businesses who can contest them fully.

On September 28, 2000, Chairman Bond joined with 29 other Republican Senators on a letter to Majority Leader Lott, urging him to include S. 2986, the Just Opportunities in Bidding Act, as an amendment to any appropriate conference report or legislative vehicle. S. 2986 would have stopped the Contractor Responsibility regulation from being finalized until the General Accounting Office has reviewed the proposal and reported to Congress on its necessity. S. 2986 was a companion to an amendment to the Treasury/Postal Appropriations bill passed in the House. The amendment was later dropped in conference, and S. 2986 was never attached to a conference report or enacted.

On September 29, 2000, Chairman Bond sent a letter to the President urging him to withdraw the proposal on the basis that two agencies including one which helps comprise the FAR Council had submitted comments criticizing the proposal and arguing against it being implemented. The General Services Administration and the Environmental Protection Administration had both commented that the rule would be too cumbersome and that current regulations were adequate to protect the government’s interests.

On December 20, 2000, the FAR Council published the final rule which reflected the changes made in the second proposal. The final rule requires contracting officers to “consider all relevant credible information” but “give greatest weight to violations of laws that have been adjudicated within the last three years preceding the offer” and establishes a hierarchy under which to consider violations and adjudications. The final rule also requires contracting officers to coordinate nonresponsibility determinations with legal counsel. Finally, the certification requirement for contractors to indicate whether they have been convicted within the previous three years of a felony or had a civil judgment against them was simplified to reduce the paperwork burden.

E. FAMILY AND MEDICAL LEAVE ACT/UNEMPLOYMENT INSURANCE
PROPOSED REGULATION TO PROVIDE PAID LEAVE FOR NEW PARENTS

On December 3, 1999, the Department of Labor's Employment and Training Administration published a proposed rule which would allow states to enact laws to provide paid leave for parents of new born children or children placed for adoption by allowing these parents to be eligible for state Unemployment Insurance (UI) funds.

The Family and Medical Leave Act (FMLA) explicitly allows employers to meet the leave requirements of the FMLA with unpaid leave. The Federal Unemployment Tax Act (FUTA) requires states to determine what requirements an employee must satisfy to qualify for benefits. Typically, states have imposed requirements of being able and available for work. The proposed rule would allow an exception to this requirement so that new parents could qualify for UI benefits.

Chairman Bond submitted comments on February 2, 2000, criticizing the proposed rule as being against Congressional intent in the FMLA and the FUTA. The Department also misconstrued the requirements of the Regulatory Flexibility Act and therefore wrongly certified that no small businesses would be affected and did not conduct an Initial Regulatory Flexibility Analysis. Finally, if implemented and pursued by the different states, this approach would put the financial stability of the UI funds in jeopardy, possibly causing them to be unavailable for the truly unemployed who were intended to be protected under FUTA. Chairman Bond called for the withdrawal of the proposal.

On June 13, 2000, the Department of Labor issued the final rule allowing states to provide paid leave to new parents through their unemployment benefits programs. The Department ignored all critical comments and issued the rule without significant changes. The Department continued to describe the rule as an "experiment" but without a definable end point or an analytical framework to evaluate the results. Finally, the Department continued to maintain that the rule does not trigger the "significant economic impact on a substantial number of small entities" trigger of the Regulatory Flexibility Act because it will only apply to states. The Office of Management and Budget determined that the regulation qualifies as a "major rule" for purposes of the Congressional Review Act because it will have an impact of \$100 million or more on the economy.

F. DEPARTMENT OF LABOR, WAGE AND HOUR ADMINISTRATION,
SURVEY OF POULTRY INDUSTRY

On October 29, 1999, Chairman Bond joined with Senators Hutchinson, Lott, Cochran, Lincoln, Helms, Shelby, Sessions, McConnell, Bunning, Roth, Biden, Coverdell, Cleland, Gramm, Hutchinson, Warner, Inhofe, Grams, Robb, and Hollings on a letter to the Department of Labor's Wage and Hour Administration objecting to an upcoming survey of the poultry industry to determine compliance with overtime regulations. The letter pointed out that the issues of the survey were in litigation and, therefore, a survey would not generate any useful information.

IV. SMALL BUSINESS TAX ISSUES

A. DEDUCTIBILITY OF HEALTH-INSURANCE COSTS FOR THE SELF-EMPLOYED

Continuing his commitment to immediate full deductibility of health insurance for the self-employed, Chairman Bond introduced the Self-Employed Health Insurance Fairness Act of 1999 (S. 343) on February 3, 1999. In his floor statement and the Dear Colleague letter that accompanied the bill's introduction, the Chairman noted that significant progress had been made in the prior two Congresses, but the self-employed are still not on a level playing field with their large corporate competitors who can deduct 100% of their health-insurance costs.

Under the bill, the self-employed health-insurance deduction would increase from the current level of 60% to 100% beginning in 1999. This change represents an acceleration of four years over current law, which provides full deductibility starting in 2003.

The bill would also correct a disparity under current law that bars a self-employed individual from deducting any of his or her health-insurance costs if the individual is eligible to participate in another subsidized health-insurance plan. This provision affects self-employed individuals who are eligible for, but do not participate in, a health-insurance plan offered through a second job or through a spouse's employer. That insurance plan may not be adequate for the self-employed business owner, and this provision prevents the self-employed from deducting the costs of insurance policies that do meet the specific needs of their families. In addition, this rule provides a significant disincentive for self-employed business owners to provide group health insurance for their employees. The bill would end this disparity by clarifying that a self-employed person loses the deduction only if he or she actually participates in another health-insurance plan.

By the end of the 106th Congress, the bill garnered 31 co-sponsors. In addition, Chairman Bond received strong support from the small business community and the major small business advocacy groups for championing the self-employed health-insurance issue in S. 343. The Chairman spoke on the need for immediate full deductibility at several events including a forum on small business health-care issues, which the Senate Small Business Committee and the U.S. Chamber of Commerce hosted on May 27, 1999, as part of Small Business Week.

During the Senate Budget Committee's consideration of the FY2000 budget resolution, Chairman Bond prevailed in having the Committee report address the self-employed health-insurance issue. Specifically, the committee report to the budget resolution states that tax relief to be provided through revenue reconciliation should include an acceleration of the deductibility of health insurance for the self-employed.

In a May 7, 1999, letter to Finance Committee Chairman William Roth, Chairman Bond urged the Finance Committee to address the issues when it considered tax provisions relating to managed-care legislation. When the Patient's Bill of Rights (S. 1344) was ultimately considered by the full Senate in July 1999, Chairman Bond joined with Senators Santorum and Nickles in an amendment that provided for full deductibility beginning in 1999

and also that corrected the “other coverage” issue addressed in S. 343. The amendment (number 1234) was agreed to by a vote of 53 to 47. The Senate later approved S. 1344 by a vote of 53 to 47. Unfortunately, the conference on the managed-care bill was not completed before the 106th Congress adjourned.

Later in July 1999, Chairman Roth included 100% deductibility of health insurance for the self-employed in the Taxpayer Refund Act of 1999 (S. 1429). During the floor debate on the bill, Chairman Bond filed an amendment to include the “other coverage” provision from his S. 343. This amendment was accepted by unanimous consent. Full deductibility beginning in 2000 and the “other coverage” provision were both included in the final conference report to the Taxpayer Refund and Relief Act of 1999 (H.R. 2488), which the Senate approved on August 6, 1999, by a vote of 50 to 49. Regrettably, that bill was vetoed by President Clinton on September 23, 1999.

In November 1999, full deductibility was included in the package of small business tax relief to offset the negative effects for small firms of the three-year increase in the minimum wage. The provision would have provided 100% deductibility beginning in 2000. Although the minimum-wage increase and small business tax package were adopted by the Senate as an amendment to the Bankruptcy Reform Act of 1999 (S. 625), the underlying legislation was not adopted by the Senate until February 2000. Due to procedural hurdles, the minimum-wage and small business tax provisions of S. 625 were not reconciled with the corresponding House legislation. As a result, a stand-alone minimum-wage package with small business tax offsets was not sent to the White House during the 106th Congress.

During the Second Session of the 106th Congress, full deductibility of health insurance for the self-employed continued to be a top priority for Chairman Bond and the small business community. Chairman Bond led the effort to add immediate full deductibility to the Marriage Tax Penalty Relief Reconciliation Act (H.R. 4810). His perfecting amendment (number 3851) to H.R. 4810 was adopted by voice vote on July 17, 2000, and called for full deductibility of health insurance for the self-employed beginning in 2000. Regrettably, all amendments to H.R. 4810 were stripped from the bill just prior to passage in order to send a clean marriage-penalty bill to the White House, which the President later vetoed.

As the Second Session neared its close, Chairman Bond wrote to Senate Majority Leader Lott urging him to include full deductibility in any legislation that the Senate considered concerning the minimum wage. While recognizing that tax and regulatory relief were unlikely to offset the damage that an increase in the minimum wage would cause for small businesses, the Chairman’s September 27, 2000, letter emphasized that such an increase should not even be considered unless a solid package of tax relief, including 100% deductibility, was included.

As a result of the Chairman’s insistence, the conference report to H.R. 2614 included a tax-relief package that would have provided 100% deductibility for the self-employed beginning in 2001. Unfortunately, the Senate was unable to vote on that legislation prior to adjournment.

B. INDEPENDENT CONTRACTOR REFORM

On February 2, 1999, Chairman Bond introduced the Independent Contractor Simplification and Relief Act of 1999 (S. 344). The bill was modeled on the Chairman's legislation in the 105th Congress (S. 460 & S. 473), which provided clear rules based on objective criteria for classifying a worker as an independent contractor; a bar against retroactive reclassifications by the Internal Revenue Service (IRS); and the repeal of section 1706 of the 1986 Tax Reform Act, which effectively bars an entire group of independent contractors from the protection available in section 530 of the Revenue Act of 1978.

In response to feedback from small business groups and some labor organizations, Chairman Bond included an anti-abuse rule in the new version of this legislation. This provision was designed to prevent employers from inappropriately using the classification rules in the bill to force workers, who should be treated as employees, into being independent contractors. The addition of this protection was welcomed by the small business groups.

Prior to introducing the bill, Chairman Bond circulated a Dear Colleague letter on January 14, 1999, urging all Senators to support his independent-contractor legislation. By the end of the 106th Congress, S. 344 had 13 co-sponsors.

In the Spring of 1999, Representatives Kleczka (D-WI) and Houghton (R-NY), introduced H.R. 1525, which embodied the labor unions' proposed solution to the independent-contractor issue. The "Independent Contractor Clarification Act of 1999" would establish a presumption under the Internal Revenue Code that a worker is an employee. To rebut the presumption, the bill essentially codifies the IRS' long-standing 20-factor test, which is based on highly subjective criteria and provides no certainty for businesses. The bill would also repeal section 530, which has provided critical, albeit limited, relief for many businesses since it was enacted in 1978. Lastly, and possibly most significantly, the bill would repeal the 1978 ban on the Treasury Department's ability to issue regulations and other guidance on this issue. This change would open the door for the Treasury Department to define once again all the rules governing independent contractors, despite the fact that the abusiveness of the Treasury Department's original rules led to the ban in the first place.

Following the introduction of H.R. 1525, a coalition of small business groups mounted a concerted effort to educate the Congress on the significant negative implications of the bill for small businesses. On May 25, 1999, Representative Houghton, Chairman of the Ways and Means Subcommittee on Oversight, held a hearing on the impact of complexity in the tax code on individuals and small businesses, during which several small business and tax professional organizations submitted testimony in opposition to H.R. 1525. Chairman Bond also submitted a detailed written statement for the record, which emphasized the need to address the pressing issue of worker classification, outlined his proposal as embodied in S. 344, and described the adverse effects that H.R. 1525 would have on small businesses across the country.

By the close of the 106th Congress, no action had been taken on the Chairman's legislation or any other bill concerning the classification of independent contractors.

C. TAX SIMPLIFICATION AND FILING BURDENS

1. Hearing on small business paperwork and compliance burdens

On July 20, 1998, Chairman Bond requested that the General Accounting Office (GAO) identify the filing and reporting requirements that place significant burdens on small businesses. In his letter to the GAO, the Chairman asked the GAO to comment on ways that these burdens could be reduced or eliminated without compromising overall compliance with the tax code. As a result of the GAO's initial findings, the Committee held a hearing on April 12, 1999, to examine the paperwork and compliance burdens that the current tax system imposes on small businesses and the self-employed.

At the hearing, the Committee heard from two small business witnesses. The first, Brian Gloe, Co-CEO of Rosse Lithographing Company in Kansas City, Missouri, testified that his company makes a minimum of 186 filings with the IRS each year. He also emphasized that the cost of tax recordkeeping and reporting are approximately \$72,000 a year, which accounts for more than 16% of the company's net income. The Committee also heard from Roger Harris, President of Padgett Business Services, who documented the burden of hiring a single employee, which can entail as many as 31 Federal forms and 25 forms in a state like Georgia. He also testified about the overall compliance burdens that small business owners must master including depreciation rules, alternative-minimum taxation, estimated taxes, as well as the added burdens that occur if the business is selected by the IRS for an audit.

The GAO presented the results of its work on the first phase of the Chairman's July 1998 request. The GAO testimony revealed that a small business owner faces more than 200 IRS forms and schedules that could apply in a given year. These forms contain more than 8,000 lines, boxes, and data requirements, and are accompanied by more than 700 pages of instructions, which does not include the tax code, regulations, rulings, and countless other guidance that the IRS issues. The Committee also learned that 76% of small business owners hired a tax professional to file their tax returns in 1995 (the most recent IRS data available), and that more than 350,000 small businesses were audited in 1995—nearly twice the rate of non-business taxpayers. Even more troubling, the GAO reported that more than 37% of small business audits resulted in no additional taxes or penalties.

The final witness at the hearing was IRS Commissioner Charles Rossotti, who reviewed the agency's modernization plans, which will include a division dedicated to small businesses and the self-employed. He also described a number of initiatives the IRS is undertaking to improve the current system. Mr. Rossotti emphasized to the Committee that the long-term goal of the IRS is to organize the whole IRS into operating units that have specific responsibility for serving different groups of taxpayers, including small business, in order to provide top quality customer service.

2. IRS paperwork unpopularity poll

During the question and answer period at the Committee's April 12th hearing, Chairman Bond raised with Commissioner Rossotti the issue of subjecting all the IRS' forms, publications, and letters to a common-sense review in an effort to provide more user-friendly communications for taxpayers. The Commissioner agreed that such an endeavor would be useful, and he committed to redrafting the worst offending documents if the Committee could help identify them.

As a result, on May 26, 1999, the Chairman unveiled the "IRS Paperwork Unpopularity Poll" on the Committee's webpage. In his letter to the Commissioner announcing the poll, the Chairman noted that the poll was designed to collect information about the IRS forms, schedules, instructions, publications, letters, and notices most in need of common-sense review and revision. He also stressed that "There is much that the IRS and Congress need to do if we are to reduce the tax filing and recordkeeping burdens that small businesses encounter every day. This common-sense review of IRS forms and other documents is a first step, and one that could have far-reaching benefits for small-business owners across the nation."

The Chairman's intention was to make the poll available for one year to capture an entire filing season. The Committee received considerable assistance from the small business advocacy groups in alerting their members that the poll was available.

During the Committee's May 23, 2000, hearing on the IRS' new SB/SE Division, the Chairman delivered the results of the poll to IRS Commissioner Rossotti. The Chairman noted that as of May 15, 2000, the Committee received 516 votes for the forms, schedules, instructions, publications, letters, and notices most in need of common-sense review and revision by the IRS. Out of those votes, the five most often cited IRS forms and related schedules are:

1. Form 1040—U.S. Individual Income Tax Return;
2. Form 941—Employer's Quarterly Federal Tax Return;
3. Form 4562—Depreciation and Amortization;
4. Form 940—Employer's Annual Federal Unemployment (FUTA) Tax Return;
5. Form 1065—U.S. Partnership Return of Income.

Chairman Bond presented IRS Commissioner Rossotti with a complete compilation of the comments and recommendations that the Committee received from the poll's participants concerning the forms, publications, letters, and notices. He applauded the Commissioner's willingness to examine these forms and documents as a testament to the IRS' overall efforts to provide greater service to America's taxpayers and as evidence of the IRS' commitment to reducing the tax filing and recordkeeping burdens that small businesses and the self-employed encounter every day.

3. IRS burden estimation model

The second phase of the Chairman's July 1998 GAO evaluation of small business tax burdens involved the IRS' efforts to create a new model for estimating the compliance burdens facing small business. During 1999, the agency began work on a basic model for assessing the burdens imposed on taxpayers with wage and investment income only. The GAO reviewed the planning documents and

the survey designed by the IRS during the Fall of 1999 and briefed Committee staff on the agency's progress. The IRS is expected to use the new model and the survey results as the basis for a second model designed to assess the compliance burdens faced by small businesses and the self-employed.

During the Committee's May 23, 2000, hearing, the GAO reported on the Chairman's request for an evaluation of the IRS' efforts to develop the new burden-estimation model. The GAO reported that the IRS has made progress on developing the model and was in the process of collecting survey data on which the model will operate. The data-collection survey was completed during the Spring of 2000, and the burden-estimation model is expected to be completed in the Spring of 2001. The Committee will continue to monitor the IRS' progress on developing the initial model and the subsequent efforts to expand it to cover small business taxpayers.

4. Increase in employment tax threshold

In late November 2000, the Internal Revenue Service announced an increase in the threshold for payments of employment taxes from the current \$1,000 to \$2,500 beginning on January 1, 2001. The change will reduce the compliance burdens for nearly one million small businesses by allowing qualifying small businesses to make employment tax payments on a quarterly basis, instead of the current monthly schedule.

According to the IRS, the increased threshold will diminish the potential for small businesses to make costly errors by reducing the number of payments they must file. As a result, the IRS will be able to send fewer notices to small businesses concerning errors and omissions of employment-tax payments. In addition, streamlining the payments will ease the cash-flow burdens for many small businesses.

On November 27, 2000, Chairman Bond issued a statement, which accompanied the IRS' news release, applauding the increased threshold. The Chairman noted that "This seemingly simple change will have far reaching effects on thousands of small businesses by reducing the compliance burdens when it comes to employment taxes. Anytime we can eliminate the need for a few more IRS forms means we can free up more time for small business owners to do what they do best—run successful businesses."

Chairman Bond also emphasized that the IRS' announcement was particularly timely for women-owned businesses. At the National Women's Small Business Summit, which was held on June 4–5 in Kansas City, Missouri, the participants placed a high priority on changes to the payroll-tax system. The change also responded to the results of the Committee's IRS Paperwork Unpopularity Poll, which indicated that employment taxes are a significant burden for small businesses. The Chairman concluded his statement by noting that the new threshold "is a clear signal that the IRS' new SB/SE Division is listening to the taxpayers it serves and is helping us make meaningful changes to the tax system."

D. INTERNAL REVENUE SERVICE OVERSIGHT

1. Electronic Federal Tax Payment System

Continuing his long-standing fight to provide a small business exemption from the Electronic Federal Tax Payment System (EFTPS), which requires businesses to deposit their taxes electronically, Chairman Bond met with IRS Commissioner Rossotti on March 19, 1999, to discuss the impact of EFTPS on small enterprises. At that meeting, the Commissioner announced that the agency would implement the Chairman's request for an increase in the participation threshold for EFTPS from the current \$50,000 in payroll taxes to \$200,000 beginning in 2000. The Commissioner also assured the Chairman that the IRS would continue to waive penalties in order to provide relief for those small enterprises that have had difficulties converting to the electronic-payment system but continue to pay their taxes in a timely manner using the coupon system. In a March 22, 1999, letter, the Chairman applauded the IRS' action, which will make EFTPS an optional payment system for the vast majority of small businesses across the nation.

2. Third-party notices

A provision of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206) added new section 7602(c) of the Internal Revenue Code, which calls on the IRS to notify a taxpayer when the agency determines that third parties must be contacted as part of an examination or collection. In February 1999, Chairman Bond learned that the IRS was implementing this new provision in a manner contrary to its congressional purpose of providing taxpayers with an opportunity to provide information requested before the IRS turns to any third party. In addition, once the IRS determines that such information can only be obtained from third parties, the taxpayer has a right under the new provision to reasonable notice concerning the third parties that the IRS needs to contact and to receive such notice before the inquiries are made. The goal of the new provision was to minimize the damage to taxpayers' personal reputations and business relationships when the IRS needs to obtain information from third parties.

In a February 25, 1999, letter to IRS Commissioner Rossotti, the Chairman expressed his concern that the agency was sending blanket notices to all taxpayers during an audit that warned "the Internal Revenue Service may need to contact third parties * * * including neighbors, employers, employees, and banks. We may use these contacts to help us determine your correct tax liability, identify your assets, or locate your current address." The Chairman stressed that the IRS' notices were incorrectly implementing the new taxpayer protection and were causing unnecessary alarm as well as raising concerns about privacy and the confidentiality of taxpayer information. He called on the Commissioner to suspend the blanket notices and implement the new taxpayer protection as Congress intended.

Shortly after receiving the letter, Commissioner Rossotti telephoned the Chairman and assured him that steps would be taken to address the third-party notice situation. Conversations between Committee staff and representatives of the Commissioner's office and IRS Chief Counsel also occurred. On March 2, 1999, the Com-

missioner issued a written statement acknowledging that the blanket notices were a mistake and committing to revise the contents of the notice to be more consistent with taxpayer rights. The Commissioner's office indicated that the review process would take approximately a month to complete and that the review process would include circulating rewritten draft notices among representatives of the tax practitioner and small business communities.

Following reports that the IRS was continuing to issue the blanket notices, the Chairman wrote to Commissioner Rossotti on March 10, 1999, to express his concern that taxpayers under examination were continuing to receive these alarming notices, even while they are being rewritten. The Chairman also stressed that merely rewriting the notices would not solve the problem and that the IRS should adjust its procedures so that third-party notices are issued to taxpayers only in those exceptional cases in which the IRS cannot first obtain all the necessary information directly from the taxpayer. "Then, and only then, the notice is to provide sufficient information about whom the IRS needs to contact for the taxpayer to mitigate the damage to personal and business relationships, which results too often when an IRS agent starts asking questions of a taxpayer's friends, employer, bank, or other third parties," the Chairman wrote.

On March 19, 1999, Chairman Bond met with Commissioner Rossotti to discuss the third-party notice issue. At that meeting, the Commissioner outlined the myriad situations in which third-party notification was now required and the steps he was taking to address the situation. He also indicated that revising the notices had become a much larger project than he had originally anticipated. The Commissioner assured the Chairman, however, that the review was a top priority and would include input from the tax practitioner and small business community. Chairman Bond followed up the conversation on March 23, 1999, with a letter thanking him for the briefing and acknowledging that the Commissioner's "directive to Internal Revenue Service (IRS) personnel ordering that the notices only be sent to a taxpayer when outside contacts are required is a critical step in resolving concerns about the notices and implementing this new taxpayer right as Congress intended."

At the Committee's April 12, 1999, hearing on small business tax filing and reporting burdens, the Commissioner testified about the agency's efforts to revise the notices and again assured the Committee that they would be forthcoming shortly. Following the hearing, staff obtained copies of the draft notices. After review, the Chairman wrote the Commissioner on April 19, 1999, to express his concern that the new draft notices still did not implement the taxpayer protection under section 7601(c) as envisioned by Congress. The Chairman also offered a number of specific suggestions for revising the notices.

Throughout the summer of 1999, Committee staff continued a dialogue with IRS personnel about the notice revision project. In September 1999, representatives of the Commissioner's office and IRS Chief Counsel briefed Committee staff on the near final rewritten notices. While every issue identified in the Chairman's previous letters was not completely resolved, the new notices reflected a more balanced approach designed to protect taxpayers when third-

party contracts are required and also address several unanticipated confidentiality and retribution issues that IRS personnel had identified through their review efforts.

On February 15, 2000, the Committee learned through an IRS press release that the agency had completed the revised notices. The following day, Chairman Bond wrote to IRS Commissioner Rossotti, noting the progress that the IRS had made to draft notices that are more clearly written with less potential for unnecessarily alarming the taxpayers who receive them. The Chairman expressed his concern, however, that the notices still do not clearly state whom the IRS intends to contact, and only a few letters indicate the type of information the agency expects to receive from the third parties. In addition, the Chairman emphasized that the notices should only be sent when third-party contacts are determined to be absolutely necessary, and they should clearly indicate who will be contacted and what information is needed. The IRS began using the new revised notices in February 2000.

On December 29, 2000, the Treasury Department issued proposed regulations concerning third-party contacts. The proposed regulations addressed many of the Chairman's concerns, and requested comments from the business community on issues such as contacts with employees, contacts that may indirectly affect the liabilities of more than one taxpayer, requests for a record of persons contacted, the reprisal exception to the third-party contact rules, and contacts with other government agencies.

3. Clinton nominees to IRS Oversight Board

The 1998 IRS Restructuring and Reform Act established an oversight board for the IRS and directed the President to nominate, within six months of the date of enactment, July 22, 1998, six individuals from the private sector to serve on the board.

On March 3, 1999, Chairman Bond wrote to President Clinton concerning his failure to make any appointments within the required time frame. The Chairman noted that while he advocated during the debate of the Act, and continued to believe, that a full-time independent board of governors would provide better management of the agency, the Oversight Board established by the Act is an important avenue for the private sector to monitor and provide input on the administration of our tax laws. He urged the President to satisfy his responsibilities under the Act and send the Senate, without further delay, nominations for each position on the IRS Oversight Board.

The President's Assistant and Director of Presidential Personnel, Bob Nash, responded to the Chairman's letter on April 9, 1999, indicating that the Administration "will expedite [the process of vetting appointment to the board] as quickly as we possibly can and the nominations will follow soonafter (sic)."

On May 12, 1999, press reports disclosed the names of four individuals that President Clinton planned to nominate to fill the six private-sector seats on the board as well as a nominee to represent the IRS employees' union on the board. The following day, Chairman Bond joined Senator Bob Graham in a letter to President Clinton expressing their concern that none of the nominees appeared to have "the hands-on small business background and expertise that the Act requires and Congress intended." The Senators were

the sponsors of the amendment to the Act requiring that at least one private-sector member of the board have experience and expertise in the needs and concerns of small businesses. Shortly after this letter, President Clinton nominated the five individuals that the Administration had previously leaked to the press.

In June 1999, one nominee, James Wetzler, withdrew his name from consideration after considerable criticism arose surrounding his nomination. Mr. Wetzler had served on the IRS Restructuring Commission in 1997 and was one of the commissioners to vote against the concept of establishing an oversight board for the IRS.

In August, the White House nominated George Farr, retired Vice-Chairman of American Express to the board. In October, the President nominated Charles Kolbe, owner of Kolbe Cattle Co., as the sixth private-sector member of the Oversight Board. Mr. Kolbe's background in the agricultural sector will bring significant experience in the needs and concerns of small businesses and farmers to the board.

Finally, in January, 2000, President Clinton sent his last nominee for the IRS Oversight Board—Nancy Killefer—to the Senate for confirmation, 18-months overdue. In February, the Senate Finance Committee held confirmation hearings on the private-sector nominees to the Board, and on March 2, 2000, the Finance Committee favorably reported the nominees to the Senate.

As a result of holds placed on the nominations, the IRS Oversight Board nominees were not confirmed by the Senate until September 8, 2000. At that time, Chairman Bond issued a statement praising the confirmation of the board and especially applauding the inclusion of Charles Kolbe whose background will bring significant experience in the needs and concerns of small businesses and farmers to the Board. The Oversight Board held its first meeting on September 29, 2000.

4. TRAC audit prohibition

As a result of the Committee's hearing on April 12, 1999, concerning small business tax filing and reporting burdens, Chairman Bond received copies of two letters sent by the IRS to a member of the American Hotel & Motel Association pertaining to the IRS' Tip Rate Determination and Education Program (TRDEP). The first letter notified the taxpayer that the IRS is conducting a "compliance check" on the business and invited the taxpayer to consider the Tip Reporting Alternative Commitment (TRAC). The second letter described the alternatives under TRDEP, including the Tip Rate Determination Agreement and TRAC, and again invited the taxpayer's participation in the program.

In an April 27, 1999, letter to IRS Commissioner Rossotti, Chairman Bond called on the Commissioner to review these letters as part of the agency's efforts to provide clear communications to taxpayers. The Chairman also expressed his concern that these letters could be viewed as strong-arming a taxpayer into using the TRAC program and may be in conflict with section 3414 of the IRS Restructuring and Reform Act. That section directs the IRS to instruct its employees that "they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer into a Tip Reporting Alternative Commitment Agreement." The Chairman called on the

IRS to suspend the use of these letters immediately until they are revised.

The Commissioner responded on May 21, 1999, by informing Chairman Bond that the particular matter had been referred to the Treasury Inspector General for Tax Administration (TIGTA) for review and that the Commissioner had taken steps to ensure that such actions do not occur again. These actions included written direction to IRS personnel and educational training concerning the prohibition on threatening audits to obtain TRAC agreements.

Staff has continued to monitor this matter as well as the TIGTA review of the cases in which the letters were used prior to the Chairman's April 27 letter.

5. Farm income-averaging

During the 105th Congress, section 1301 of the Internal Revenue Code was enacted and made permanent allowing farmers to average their income. This provision was designed to help farmers weather the current agricultural crisis and became effective in tax year 1998. Despite the regulations having been enacted in July of 1997, the IRS had not issued any interpretive regulations on the new income-averaging rules as the 1998 filing season began.

After receiving numerous complaints from farmers and their tax consultants concerning the lack of guidance, Chairman Bond and Senator Grassley wrote to IRS Commissioner Rossotti on March 26, 1999, to call attention to several areas of confusion under the rules that the regulations should address. The Senators urged him to issue immediate guidance and to waive penalties on farmers who filed their 1998 tax returns without the benefit of such guidance.

On April 2, 1999, the Commissioner responded that regulations were in the final stages and would be issued "in the near future." Staff inquiries revealed that the Commissioner had approved the regulations and forwarded them to the Treasury Department for final approval just after the Senators' March 26 letter. The Commissioner also assured the Senators that farmers would not be penalized for relying on the limited guidance provided in the instructions and IRS publications even though such sources are not binding authority. The agricultural community applauded the Senators' efforts and welcomed the "no penalty" assurances from the IRS.

After several staff inquiries, the Treasury Department finally released proposed regulations on farm income averaging on October 7, 1999. Practitioners generally praised the proposed regulations, while making some suggestions for improving the guidance.

6. IRS reorganization

Based on a proposal from Chairman Bond in January 1998, which was later incorporated into the Internal Revenue Service Restructuring and Reform Act, the IRS continued its efforts to restructure the agency into four operating divisions to serve particular groups of taxpayers better. One such division will be dedicated to the needs and concerns of small business and self-employed taxpayers.

As part of the Committee's oversight responsibilities, Chairman Bond joined with Representative Houghton (R-NY), Chairman of the House Ways and Means Subcommittee on Oversight, in a February 12, 1999, to request the GAO to conduct a review of the IRS'

overall restructuring plans and their implementation throughout the 106th Congress. The request also asked the GAO to identify any challenges and obstacles facing the IRS in achieving its reorganization efforts. On March 5, 1999, Chairman Bond also initiated a separate GAO review of the IRS' reorganization plans specifically relating to small business and self-employed taxpayers.

Throughout the 106th Congress, staff received periodic reports on both of these initiatives. GAO briefings focused particularly on the IRS' new Small Business/Self-Employed (SB/SE) Taxpayer Division, which became operational on October 1, 2000. These briefings revealed positive plans for greater up-front education and communication efforts for taxpayers. Initial plans also indicate that the SB/SE division will be the largest of the four divisions and will be a catch-all for various operations that do not fit into another division (e.g., estate and gift taxation). The GAO also identified various resource and communication challenges with respect to the IRS' overall restructuring efforts.

The GAO completed its review of the IRS' reorganization plans relating to small business and self-employed taxpayers in May 2000. The GAO's findings were highlighted in the Committee's May 23, 2000, hearing on the IRS' new SB/SE Operating Division. During the hearing the GAO reported that the new SB/SE Division has the potential for providing improved service for small business taxpayers, although the agency faces several challenges as it implements the new division, including human resource needs, technological limitations, necessary improvements in performance management.

IRS Commissioner Rossotti also presented the Committee with a progress report on the new SB/SE Division. He noted that the division will focus on three components, the first of which, Taxpayer Education and Communications, will work to improve compliance by assisting small businesses through education and other information before their tax returns are filed. The second component, Customer Account Services, will work to focus on resolving issues that arise after a tax return is filed. The third component will consist of the traditional compliance functions of examinations and collections.

The Committee also heard from two private-sector witnesses on the IRS' efforts to include outsiders in its modernization and in the plans to create the new SB/SE Division. In closing the hearing, Chairman Bond noted that the real work of the new SB/SE Division will begin when the new division becomes operational, which occurred on October 1, 2000.

In an effort to continue monitoring the success of the IRS' modernization efforts and the progress of the new SB/SE Division, Chairman Bond asked the GAO to undertake a follow-on review of the agency in these areas. In his September 27, 2000, request letter, Chairman Bond asked the GAO to focus on, among other things, the goals that the SB/SE Division has set and how they will be measured, the steps the Division is taking to identify the most cost effective and beneficial ways to provide help to small businesses, the actions the Division is taking to change the kind of service provided to small businesses and the self-employed, and the progress the Division is making in identifying and setting priorities

for its information-system requirements. The Committee expects that the GAO's review will continue into the 107th Congress.

7. IRS early intervention programs

Following on the Committee's April 12, 1999, hearing on small business tax burdens, Chairman Bond asked the GAO to undertake a review of the IRS' early intervention programs. In his July 26, 2000, request letter, the Chairman noted that timely intervention by the IRS can help prevent businesses from accumulating substantial unpaid taxes, and the associated interest and penalties, which, if allowed to compound over months or years, many small business taxpayers may be unable to pay.

The GAO is expected to review existing early intervention programs at the IRS to assess the time and resources currently dedicated to identifying taxpayers with employment-tax delinquencies. The Chairman also requested that the GAO examine early intervention programs in use at other Federal agencies in order to identify best practices that might be useful to the IRS. The GAO will provide the Committee staff with regular briefings, and its work is expected to continue into the 107th Congress.

8. TIGTA review of IRS response rate to small business tax questions

In late September, 2000, the Committee learned of a study undertaken by TIGTA concerning the accuracy of the IRS' response to small business questions posed through the Internet. Based on the study's findings, Chairman Bond wrote to IRS Commissioner Rossotti and SB/SE Division Commissioner Joseph Kehoe on September 28, 2000, to express his concern that out of the sample of 50 questions concerning small business tax issues, the IRS provided the small business taxpayer with the correct answer only 54% of the time. He emphasized that a 54% accuracy rate for the small businesses tax questions poses a grave risk to small business owners and the self-employed who turn to the IRS for help and rely on the accuracy of the agency's answers at their peril. Chairman Bond requested that the IRS take steps to improve the accuracy rate with respect to tax questions submitted by small businesses and self-employed individuals.

In a November 17, 2000, response, Commissioner Rossotti agreed with the Chairman's concerns and assured the Committee of his commitment to improving the quality of assistance that the IRS provides to small businesses. The Commissioner stressed that the IRS is attempting to use specialized groups of employees focusing on narrow topic areas to improve the quality of responses rendered. In addition, he indicated that the IRS will make greater use of quality review programs to improve employee training and the agency's accuracy rates.

9. TIGTA review of IRS processing of small Business AMT exemptions

The Committee learned in early December, 2000, that TIGTA had completed a review of the IRS' handling of corporate tax returns. The TIGTA study revealed that more than 2,000 small corporations may have overpaid their taxes due to an unawareness or misunderstanding of the small-corporation exemption from the al-

ternative minimum tax (AMT) under section 55(e) of the Internal Revenue Code. Of the small corporations sampled by TIGTA, 93% qualified for the small-corporation exemption and erroneously paid an average of \$11,638 in AMT. As a result, in tax year 1998 these small-corporate taxpayers appear to have overpaid the Federal government by more than \$25 million.

In a December 12, 2000, letter to IRS Commissioner Rossotti and SB/SE Division Commissioner Kehoe, Chairman Bond noted that there is no automatic system under which these taxpayers will receive a refund of their overpaid taxes or even be made aware of their error. He stressed that the small-corporate taxpayers will only receive a refund if they realize their own mistake and file an amended tax return. In light of this situation, Chairman Bond called on the IRS to give prompt attention to steps that can be taken to assist small corporations that have overpaid their taxes and to help all small-corporate taxpayers avoid such overpayment as a result of the AMT in the future. The Chairman also asked both Commissioners to look into the recommendations for addressing this issue, which TIGTA set out in its report.

In addition to asking the IRS to address these overpayments, Chairman Bond also wrote to the major small business organizations. In his letter, he asked each organization to alert its small corporate members to the TIGTA report and urge them to review their tax returns in case a refund was due.

The Committee also learned through staff conversations with the IRS that the agency was endeavoring to identify the small-corporate taxpayers who overpaid their AMT. IRS officials indicated that the agency would be sending notices to such taxpayers reminding them of the small-corporation exemption from the AMT and advising them to file an amended tax return if they are entitled to a refund.

E. TAXPAYER REFUND AND RELIEF ACT OF 1999

As a result of the Chairman's efforts, the Taxpayer Refund and Relief Act of 1999 included a substantial number of tax provisions directly benefitting individual taxpayers and small business owners. The significant provisions of the Act, which passed the Senate on August 5, 1999, by a vote of 50 to 49, and was vetoed by President Clinton on September 23, 1999, included:

Rate reductions: The bill would have reduced each of the five tax rates by 1%, which translates into a 7% reduction in the bottom rate and a 2.5% reduction in the top rate. The current 15% lowest rate would have dropped to 14.5% in 2001 and then to 14% in 2003; the other rates would have dropped by 1% in 2005. The bottom tax bracket would also have expanded by \$3,000 starting in 2006, bringing more taxpayers into the lowest tax bracket.

Marriage penalty: The bill would have doubled the standard deduction for married couples over the first five years; in the second five years the income thresholds for couples in the lowest tax bracket would also have doubled. This provision only provides relief for couples who do not itemize. The Senate version of the bill permitted couples who itemize to file combined returns, which would provide greater marriage-penalty relief.

Alternative minimum tax: The bill would have repealed the individual alternative minimum tax (AMT) over 10 years and would

have continued to exclude from the AMT personal tax credits (e.g., the \$500 child tax credit, HOPE scholarship and Lifetime Learning tax credit, adoption tax credit, tax credit for the elderly and disabled, and dependent-care tax credit) effective for tax year 1999. The bill also made significant changes to the corporate AMT and coordinated the AMT rules so that farmers using the new income-averaging provisions enacted as part of the 1997 Taxpayer Relief Act would not lose a portion of the benefits due to the AMT.

Self-employed health insurance deductibility: The bill would have accelerated the 100% deductibility of health insurance for the self-employed to begin in 2000 based on the Chairman's Self-Employed Health Insurance Fairness Act. The bill also included the Chairman's provision to ensure that the self-employed do not lose the deduction as a result of merely being eligible for another insurance plan.

Health care: The bill would have provided an above-the-line deduction for employees who pay at least 50% of the health-insurance costs, as well as a deduction for long-term care insurance.

Small Business: In addition to the self-employed health-insurance deduction, the conference agreement would have increased the small business equipment-expensing limitation to \$30,000 starting in 2000, and repealed the Federal Unemployment Tax Act (FUTA) surtax of 0.2% in 2005. The agreement also would have increased the business-meal deduction from 50% to 65% by 2005. Additionally, the bill included two provisions to reduce tax complexity and burdens on small banks organized as S corporations.

Farm Provisions: The FFARRM ("Farm, Fish and Ranch Risk Management") account provisions of S. 642, which Chairman Bond co-sponsored with Senator Grassley, were included in the bill and would have become effective in 2000. The accounts would also have been extended to fishermen.

Capital gains: The bill would have reduced the capital-gains tax rate from 20% to 18% (10% to 8% for taxpayers in the lowest bracket) effective January 1, 1999. Beginning in 2000, capital gains would have been indexed for inflation. The bill also would have reduced the "depreciation recapture" rate on commercial real estate from 25% to 23%, which was intended to help the troubled real estate industry.

Estate tax: The bill would have lowered the estate and gift tax rates and ultimately would have repealed the "death tax" in 2008.

Pension provisions: The bill would have phased in an increase in the contribution limits on IRAs and have increased the income limit and conversion limit for Roth IRAs. It included "catch up" provisions for older individuals as well as a host of other beneficial changes to the pension rules, which would have encouraged private retirement savings and assisted businesses in establishing and maintaining pension plans.

Other provisions: The bill would have extended the research and development tax credit for five years. It would also have extended the exclusion for employer-provided educational assistance through 2003, and provided an array of other tax-related educational benefits.

F. ESTATE TAX REFORM

In July 2000, the Senate took up the Death Tax Elimination Act (H.R. 8), which would have phased out the current estate, gift and generation-skipping taxes over 10 years. The bill would also have provided additional relief during the phase-out period by reducing the tax rates and by converting the current unified estate and gift tax credit with a tax exemption.

In his floor statement on July 12, 2000, Chairman Bond stressed that repeal of the “death tax” has long been a priority for the small business community. Following on the heels of the National Women’s Small Business Summit, held in Kansas City, Missouri on June 4 and 5, 2000, the Chairman also emphasized that the repeal of the estate tax was the number one priority of small, women-owned businesses in America, which is one of the fastest growing segments of the economy. He stressed that the current estate-tax regime costs small business owners both in terms of taxes that must be paid on the death of the owner and in terms of estate planning costs to avoid or reduce the estate tax. Chairman Bond concluded that the true victims of the estate tax are the small business jobs that are lost when the enterprise is forced to close in order to pay the death taxes and those that are lost due to funds wasted on estate planning to avoid the devastation of the estate tax.

The Death Tax Elimination Act passed the Senate on July 14, 2000, by a vote of 59 to 39. Regrettably, it was vetoed by President Clinton on August 31, 2000.

G. MARRIAGE PENALTY RELIEF

Also in July 2000, the Senate took up the Marriage Tax Penalty Relief Reconciliation Act of 2000 (H.R. 4810). The bill would have partially eliminated the marriage penalty by doubling the standard deduction for couples who do not itemize and by doubling the tax brackets for low and moderate income couples in the 15% and 28% tax brackets. The bill would also have expanded the phase-out range of the Earned Income Tax Credit (EITC) to \$2,500 beginning in 2001, and have permanently extended the current exclusion from the alternative minimum tax (AMT) for personal tax credits (e.g., dependent care credit, adoption credit, \$500 child credit, etc.). The bill passed the Senate on July 18, 2000, by a vote of 61 to 38.

The conference agreement to H.R. 4810 modified the Senate bill by eliminating the adjustment to the 28% tax bracket and by reducing the EITC expansion to \$2,000. The conference report was approved by the Senate on July 21, 2000, by a vote of 60 to 34. Regrettably, the bill was vetoed by the President on August 5, 2000.

H. SMALL BUSINESS ACCOUNTING ISSUES

1. Installment-sales limitation

One of the revenue raisers included in the Work Incentives Improvement Act of 1999 (Public Law 106–170) turned out to have unexpected adverse consequences for small business owners seeking to sell their businesses. Despite Finance Committee hearings on this provision, which was included in the President’s Fiscal Year 2000 budget proposal, the problems with the provision were not

identified until the Work Incentives Improvement Act was set to be signed by the President.

Under the bill, the installment sales method of accounting for a disposition of business property was repealed for accrual basis taxpayers, thereby restricting it only to cash basis taxpayers. As a result, a number of small businesses advocacy groups informed the Committee that some small firms would have to pay tax on the gains from selling their business or significant assets if they used seller financing, even though cash payments would be received over a period of years in the future.

In an effort to discover the scope and breadth of the problem caused by this provision, Committee staff hosted a meeting on December 6, 1999, to dispel misinformation circulated in the press and to focus on solutions to the issues raised by the new provision. The meeting led to additional conversations between the small business community and the Treasury Department to see if there were administrative steps that could be taken to alleviate the impact on small businesses.

Through the leadership of Senator Conrad Burns, the severe adverse impact of this limitation on the use of installment-sales accounting was made clear. To remedy the unintended result, Senator Burns introduced S. 2005, which would restore the ability of small businesses to use seller financing in their business transactions. This legislation enjoyed strong bipartisan support, including the Chairman and seven other Members of the Committee. During the Senate's consideration of the Marriage Tax Penalty Relief Reconciliation Act of 2000, Senator Burns' legislation was added as an amendment to the bill by a vote of 99 to 0. The legislation was also included in the conference report to H.R. 2614, which the Senate did not complete prior to adjournment.

On December 15, 2000—the last day of the 106th Congress—the House passed H.R. 3594, introduced by Congressman Herger. This legislation paralleled Senator Burns' S. 2005 to repeal the limitation on the use of the installment sales rules. Later that day, the Senate overcame several holds on the legislation and passed the bill by unanimous consent. The repeal was the primary tax victory achieved for small business during the Second Session and was widely heralded by the small-business community. The bill was signed into law on December 28, 2000.

2. Small Business Tax Accounting Simplification Act of 2000

The controversy surrounding the limitations on the installment-sales rules fed into a larger debate over the application of the cash and accrual accounting rules for small businesses. Throughout the 106th Congress, the Committee received complaints from the small business community that the IRS was aggressively trying to force small businesses to use complex inventory and accrual accounting rules, instead of allowing them to use the simpler cash-accounting rules as Congress intended.

In response to the calls from the small business community for a clarification of the cash accounting and inventory accounting rules under the Internal Revenue Code, Chairman Bond introduced the Small Business Tax Accounting Simplification Act (S. 2246) on March 9, 2000. The bill sets forth a clear \$5 million threshold for small businesses, below which they would be permitted to use cash

accounting in their business operations. In addition, the bill would provide a simple test for application of the inventory accounting rules in small businesses. This legislation received broad support for the small business community.

For its part, the Treasury Department issued Revenue Procedure 2000-22, which provides a safe-harbor from the accrual-accounting rules for small businesses with \$1 million in gross receipts. On May 4, 2000, Chairman Bond and House Small Business Committee Chairman James Talent wrote to Treasury Secretary Summers in support of the Administration's effort to provide guidance and relief for small businesses inadvertently affected by the Work Incentives Improvement Act. In their letter, however, the Chairmen express reservations about the Treasury Department's statutory authority to set the threshold at \$1 million, and they requested that it be raised to \$5 million which is more consistent with statutory precedent. In addition, the Chairmen expressed their concern that the Treasury Department's guidance did not provide an opportunity for notice and comment by affected taxpayers since the agency circumvented the Administrative Procedure Act, the Regulatory Flexibility Act (RFA), and the 1996 amendments to the RFA, contained in the Small Business Regulatory Enforcement Fairness Act.

In his September 27, 2000, letter to Senate Majority Leader Lott, Chairman Bond urged him to include a cash-accounting clarification in the minimum-wage legislation to reduce small business tax-accounting compliance burdens and provide much needed clarity and certainty. As a result of the Chairman's leadership, the conference report to H.R. 2614 included a modification of the Small Business Tax Accounting Simplification Act with a \$2.5 million threshold. Regrettably, the Senate was unable to vote on the year-end tax legislation prior to adjournment.

I. TAXPAYER RELIEF ACT OF 2000

As the Second Session drew to a close, considerable attention was given to increasing the minimum wage and the detrimental effects that such a change would have on small businesses. On September 27, 2000, Chairman Bond wrote to Senate Majority Leader Lott advising him that tax and regulatory relief were unlikely to offset the damage that an increase in the minimum wage would cause for small businesses and emphasizing that such an increase should not even be considered unless a solid package of tax relief was included. The Chairman enumerated a list of tax priorities for small businesses including: full deductibility of health-insurance cost for the self-employed, repeal the limitation on the use of installment-sales accounting, increased expensing for equipment purchases, clarification of small-business tax accounting rules, increased deductibility of meal expenses for small businesses, repeal the Federal unemployment tax act (FUTA) surtax, and pension simplification and reform.

In October 2000, the Chairman worked closely with the Senate leadership and the Finance Committee to develop a package of small business tax relief to offset the minimum-wage increase. In addition, the conference report to the Committee's Certified Development Company Program Improvements Act of 1999 (H.R. 2614) was selected as the vehicle to move this package as well as the

FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (H.R. 4986), the Comprehensive Retirement Security and Pension Reform Act of 2000 (H.R. 1102), and a package of Medicare adjustments. Each of the conference report's components were introduced on October 25, 2000, in the House as the following separate bills:

H.R. 5538 (the Minimum Wage Act of 2000);

H.R. 5542 (the Taxpayer Relief Act of 2000);

H.R. 5543 (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000);

H.R. 5544 (the Pain Relief Promotion Act of 2000); and

H.R. 5545 (the Small Business Reauthorization Act of 2000).

The provisions of the Taxpayer Relief Act of 2000 that pertain to small businesses include the following:

Health care provisions: The bill would have accelerated the 100% deductibility of health insurance for the self-employed to begin in 2001 based on the Chairman's Self-Employed Health Insurance Fairness Act. The bill also included the Chairman's provision to ensure that the self-employed do not lose the deduction as a result of merely being eligible for another insurance plan. In addition, this would have provided an above-the-line deduction for employees who pay at least 50% of the health-insurance costs, as well as a deduction for long-term care insurance.

Equipment expensing: The bill would have increased the small business equipment-expensing limitation to \$35,000 starting in 2001, which will help small businesses avoid the cost and complexity of capitalizing and depreciating equipment purchased and enable them to use the funds made available from immediate expensing to expand their businesses and create new jobs.

Repeal of the limitation on installment sales: Following Senator Burns' S. 2005, the bill would have repealed the limitation imposed under the Work Incentives Improvement Act and restored the ability of small businesses to use seller financing in their business transactions.

Clarification of small-business tax accounting rules: The bill also included Chairman Bond's Small Business Tax Accounting Simplification Act of 2000 (S. 2246) with a modified threshold of \$2.5 million, which would have provided a safeharbor for small firms and dramatically reduce their tax-accounting compliance burdens and provided much needed clarity and certainty.

Farm Provisions: The FFARRM ("Farm, Fish and Ranch Risk Management") account provisions of S. 642, which Chairman Bond co-sponsored with Senator Grassley, were included in the bill and would have become effective in 2001. The bill would also have coordinated the farmer income-averaging rules enacted in 1997 with the alternative minimum tax (AMT) to ensure that farmers do not lose the benefit of income averaging to the AMT. The bill did not include Senator Brownback's Conservation Reserve Program Tax Fairness Act (S. 2344), which Chairman Bond co-sponsored on April 4, 2000, to force the IRS to recognize payments under the Conservation Reserve Program as rentals from real estate.

Pension provisions: The bill would have phased in an increase in the contribution limits on IRAs and other types of pension plans, improved portability of pension savings from one plan to another, and provided a host of other beneficial changes to the pension rules, which would have encouraged private retirement savings and

assisted businesses in establishing and maintaining pension plans. The bill also included “catch up” provisions for older individuals, significant simplifications to the current overly complex pension rules, and provisions for strengthening pension security and enforcement.

Community Revitalization: The bill included provisions to designate renewal communities and expand empowerment zones through tax benefits such as tax credits, additional equipment expensing, and elimination of capital gains on qualifying assets. It would also have established a New Markets Tax Credit, increase the low-income housing tax credit, and expanded the private activity bond volume limits. Each of these provisions were intended to improve impoverished communities by attracting business investments and new-job potential. (These provisions were later enacted as part of H.R. 4577, the Consolidated Appropriations Act, 2001, which the House and Senate enacted on December 15, 2000).

Other provisions: The tax relief package also would have increased the business-meal deduction from 50% to 70%, repealed the Federal Unemployment Tax Act (FUTA) surtax of 0.2%, extended the Work Opportunity Tax Credit through June 30, 2004, increased the maximum reforestation expenses qualifying for amortization and credit, and extended availability of Medical Savings Accounts for two years.

The conference report to H.R. 2614, including the tax relief package for small businesses, was passed by the House on October 26, 2000, by a vote of 237 to 174, with 1 Representative voting present. The Senate took up the conference report just prior to the November 7, 2000, election. Regrettably, the Senate was unable to vote on the conference report before Congress adjourned on December 15, 2000.

J. OTHER TAX ISSUES

1. Tax relief for farmers

In a joint effort with the House Small Business Committee, the Committee hosted a roundtable on agricultural issues in Kansas City, Missouri, on August 24, 1999. The participants focused on regulatory, tax, and trade issues affecting farmers and ranchers, which are predominantly small businesses. The roundtable was well attended and provided Chairmen Bond and Talent with important feedback and suggestions as to issues of import to the agricultural community. Both Chairmen committed to pursuing opportunities to address the issues raised by the roundtable participants during the remainder of the 106th Congress.

2. Tax reform

The primary focus on taxes during the 106th Congress continued to be on reforming the current tax system and providing tax relief, especially for small businesses and the self-employed. In order to maintain the momentum for overall tax reform, Chairman Bond again co-sponsored the Tax Code Termination Act (S. 627), sponsored by Senator Tim Hutchinson. The bill would sunset the current Internal Revenue Code at the end of 2003 in favor of a new tax system. No action occurred in the Senate on this legislation during the 106th Congress.

V. SMALL BUSINESS ENVIRONMENTAL ISSUES

A. INDUSTRIAL LAUNDRY EFFLUENT LIMITATIONS

In December, 1998, EPA proposed a rule to limit effluent emissions from the treatment of rags and other materials by industrial laundries. The proposal included a no regulation option with a voluntary industry program in lieu of categorical standards. Small businesses make up over 90 percent of the industrial laundry industry and would bear most all of the identified impacts of the proposed regulations. In February 1999, members of the industrial laundry industry expressed concerns to the Small Business Committee that EPA estimates of the proposed rule's burden had been revised upwards while estimates of the benefits of the rule were lowered.

On February 19, 1999, Chairman Bond, along with Senator Wyden, sent a letter to EPA Administrator Browner expressing concerns about the proposed rule and urging full Agency consideration of the voluntary alternative. In June 1999, EPA chose not to promulgate a categorical standard and instead pursued the voluntary program. On September 2, 1999, Chairman Bond received a letter from Jere Glover, Chief Counsel for Advocacy at the Small Business Administration (SBA), sharing this matter with the Senator as a recent success of SBA.

B. MC LAUGHLIN GORMLEY KING/WHITMIRE MICRO-GEN PESTICIDES APPLICATION

EPA is currently considering the application of McLaughlin Gormley King Company (MGK) to register the pesticide prallethrin for use in protecting food from contamination. Prallethrin would replace a more environmentally harmful pesticide currently in use. The new use for prallethrin would be marketed through a Missouri based distributor Whitmire Micro-Gen which is a small business.

In February 1999, MGK expressed its concerns to the Small Business Committee that its application at EPA had been under review at the Agency for seven years with no approval or disapproval date in sight. On February 22, 1999, Chairman Bond wrote to EPA Administrator Browner expressing his concern over the Agency's extremely long delay in processing the application and requesting an explanation for the Agency's conduct. Correspondence to the Agency on this matter also came from Representative Talent, as well as, Senators Feinstein, Grams, and Wellstone.

EPA failed to respond to Chairman Bond's February 22 request and Chairman Bond again wrote the Agency on March 31, 1999, seeking an explanation for EPA's failure to process the pesticides application in a timely manner and failure to respond to his inquiry on the status of the matter. Staff of the Senate Committee on Small Business as well as the House Committee on Small Business met with EPA in April where the Agency agreed to complete review of the application by the end of 1999. In January 2000, EPA completed its review of the application and requested further information from MGK to approve the application. MGK is reviewing that request.

C. LEAD TRI RULEMAKING

EPA's Toxic Release Inventory (TRI) program requires entities to report, the use or release of certain chemicals beyond threshold amounts. On August 3, 1999, EPA proposed to reduce the reporting threshold for lead from 25,000 pounds per year down to 10 pounds per year. The Small Business Committee met with representatives from the metal finishing and electronic circuit board industry who complained the rule would significantly affect their industries and that EPA had failed to conduct the required small business outreach to determine the rules' impacts on small businesses.

On September 8, 1999, Chairman Bond wrote EPA Administrator Browner expressing his concern that EPA failed to conduct the needed small business outreach and analysis mandated by the Small Business Regulatory Enforcement Fairness Act (Red Tape Reduction Act) and EPA's own small business policy. The Chairman urged EPA to conduct meaningful outreach to small businesses impacted by the rule and reconsider its Red Tape Reduction Act determination of no significant impact. Chairman Bond also encouraged EPA to extend the rules' comment deadline to allow for meaningful outreach.

Further analysis of the proposed rule and its supporting economic analysis, and an almost complete lack of EPA action confirmed EPA short-circuited and circumvented its obligation to consider the rule's impacts on small businesses. On October 15, 1999, Chairman Bond wrote EPA Administrator Browner requesting that the Agency withdraw the proposed rule until the Agency gave proper consideration to the rule's impacts on small businesses. The Chairman scheduled a hearing for October 28, 1999 to expose EPA's failure to meet its Red Tape Reduction Act obligations in this case unless EPA withdrew the rule.

Preparations for the hearing included small business testimony, CRS analysis of EPA's failures, industry representative testimony and an invitation to EPA Administrator Browner on October 20, 1999. EPA responded on October 22, 1999 with an offer to conduct additional small business outreach. In a meeting with EPA on October 26, 1999, Small Business Committee staff expressed its concern that the input of small businesses impacted by the rule would not impact the rule unless EPA reconsidered its proposed rule.

On October 27, 1999, EPA agreed to extend the public comment period for two additional months, hold three small business stakeholder meetings in Los Angeles, Chicago and Washington, and reconsider its impact certification and proposed rule based on submitted information. As a result of these concessions, the Chairman postponed the hearing indefinitely pending further Agency action on the proposed rule.

On October 28, 1999, Chairman Bond requested GAO conduct an investigation into the EPA office responsible for developing the Lead TRI rule to examine its historic treatment of its Red Tape Reduction Act responsibilities.

On September 20, 2000, GAO released its report, Regulatory Flexibility Act, Implementation in EPA Program Offices and Proposed Lead Rule. The report found EPA's analysis highly susceptible to the assumptions used by EPA. GAO estimations of the rule's impacts produced an additional 1,200 small businesses which

would be significantly impacted by the rule. Based on these concerns and inter-agency disagreement regarding the science behind the need to lower the lead reporting threshold, EPA postponed final action on the rule into 2001.

D. SMALL BUSINESS BROWNFIELDS REDEVELOPMENT ACT OF 1999

On July 21, 1999, Senator Jeffords introduced the Small Business Brownfields Redevelopment Act of 1999. The bill seeks to link the SBA's successful loan guarantee and community development corporation programs directly to supporting brownfields financing needs. The bill was referred to the Committee on Small Business. Senator Jeffords wrote Chairman Bond on September 28, 1999 in hopes that the bill would be taken up by the Committee during reauthorization of the SBA in 2000. While supportive of the need to provide incentives for small businesses to revitalize brownfields, members of the SBA loan community were concerned that loan program set asides for brownfields redevelopment would go unused without accompanying liability relief provisions.

E. OZONE DEPLETING SUBSTANCES RULEMAKING

On August 21, 2000, Chairman Bond received a letter from Foam Supplies, Inc., of Earth City, Missouri. Foam Supplies wrote regarding its concerns over an EPA proposal to increase regulation of foam materials manufactured with ozone damaging materials such as hydrochlorofluorocarbons (HCFCs). Upon further inquiry, Chairman Bond discovered that EPA failed to consider adequately the impacts of its proposed regulation on small businesses using the product as required by the Red Tape Reduction Act. On September 26, 2000, Chairman Bond wrote EPA to raise these concerns, determine exactly who EPA had contacted in drafting its proposed rule, and to transmit information on small businesses which would be impacted by the proposed regulation.

On October 25, 2000, EPA responded to Chairman Bond's inquiry with a list of corporations it consulted in determining the impacts of its regulation. Unfortunately, the list was comprised solely of large conglomerates, almost all with revenues surpassing \$1 billion.

On December 18, 2000, Chairman Bond responded to EPA's information submission by noting EPA's failure to include small businesses in its rulemaking as required by EPA policy and SBREFA. Chairman Bond informed EPA of his intention to hold a hearing by the Committee in the 107th Congress on EPA's performance under SBREFA and its small business policy requirements. This hearing would support legislative efforts by the Committee to close loopholes in SBREFA which may allow agencies to avoid meaningful inclusion of small businesses in rulemakings.

F. ACRYLAMIDE RULEMAKING

On September 18, 2000, Chairman Bond received a letter from Pitometer, Specialty Sewer, of Hazelwood, MO. Pitometer wrote the Chairman to express its concern over EPA's continued delay to finalize its proposed regulation of acrylamide. That substance is used as a grout to seal sections of sewer lines. In 1991, EPA proposed to ban acrylamide grouts, but has never been able to obtain inter-

agency acceptance of the proposal. Instead of formally dropping the proposal, EPA left the proposal on the books and has periodically attempted to push it through full approval. This situation has left a cloud over whether acrylamide products will be banned by EPA, and has thus constrained their usage by the sewer service industry. There are currently no truly acceptable substitutes from a durability and cost-effectiveness perspective, leaving small business constituents such as Pitometer in a bind. Staff of the Small Business Committee contacted EPA and urged that EPA seek final resolution of the issue as soon as possible. At the end of November 2000, EPA scheduled final action on the rule for 2001. Chairman Bond will continue to work with EPA to ensure the Agency fully considers the impacts of its rulemaking on affected small businesses.

G. COMPLIANCE ASSISTANCE

1. Compliance assistance funding

EPA's Compliance Assistance program provides assistance to entities which desire to meet their environmental obligations but lack the resources, expertise or understanding to follow EPA's complex and voluminous requirements. Compliance assistance provides access for the regulated community, and especially most small businesses, to a knowledgeable and reliable source of information without the threat of enforcement. Compliance assistance helps environmental protection occur sooner and much more efficiently rather than haphazardly and belatedly after an enforcement action. Compliance assistance also helps reach those members of the regulated community who may never be visited or contacted by the limited numbers of EPA or state inspectors and thus escape the effective reach of the Enforcement program.

Fiscal Year 2000 EPA resource documents indicated the Agency planned to decrease funding for compliance assistance activities in the enforcement program. The Chairman included questions for the record subsequent to EPA's appropriations hearing on the proposed cuts. EPA denied that it was making cuts and instead asserted that it was increasing funding to the very programs which appeared to receive a cut.

On September 30, 1999, Chairman Bond responded to this false and misleading information with a letter to Administrator Browner documenting EPA's cuts to compliance assistance and admonishing the Agency for its misleading conduct. To ensure sufficient funding for compliance assistance activities, Chairman Bond included a \$25 million funding floor for OECA compliance assistance in the Fiscal Year 2000 Senate VA, HUD appropriations bill report language which was adopted by the Conference committee. The Chairman also requested and obtained additional detailed resource information on the compliance assistance program to aid in future oversight to ensure appropriate support and funding for the program.

In December 1999, Chairman Bond received information from EPA that it was not complying with Congressionally directed \$25 million funding floor for compliance assistance.

On June 5, 2000, Chairman Bond requested information documenting EPA's compliance assistance spending plans. Upon receiving the EPA information, Chairman Bond determined that EPA was not meeting Congressionally directed funding levels and di-

verting funds from compliance assistance programs to other programs such as civil enforcement. On July 12, 2000, Chairman Bond expressed his concern to EPA over this funding issue and requested EPA plans to meet the funding level. Staff of the Senate Small Business Committee met with EPA officials who reported on their compliance assistance funding.

As part of the Fiscal Year 2001 VA, HUD and Independent Agencies appropriations law, passed on October 27, 2000, Chairman Bond included report language reiterating the \$25 million funding floor and prohibiting an EPA diversion of funds from compliance assistance to other activities. Chairman Bond continues to monitor EPA actions to ensure EPA devotes proper funding levels to compliance assistance activities.

2. Small Business Compliance Assistance Centers funding

Reports came to Chairman Bond that despite public pronouncements, EPA was reducing funding available for Small Business Compliance Assistance Centers. The Chairman included questions for the record subsequent to EPA's appropriations hearing and EPA responded that the Centers remain a priority for the Agency.

3. Aiming for excellence report implementation

In July 1999, EPA issued a report entitled "Aiming for Excellence, Actions to Encourage Stewardship and Accelerate Environmental Progress." The report describes various reinvention activities undertaken by the Agency over the last few years. Included are two chapters on compliance assistance initiatives. The Committee followed the implementation of the Aiming for Excellence tasks and milestones to ensure EPA met the commitments of the report to increase compliance assistance. The tasks included efforts to plan, coordinate and promote compliance assistance activities as well as specific initiatives to provide compliance assistance tools for every new economically significant regulation issued by the Agency.

In December 1999, Committee staff attended a compliance assistance providers forum hosted by EPA in Dallas, TX and attended by Federal and state agencies engaged in assisting compliance by the regulated community.

On March 9, 2000, Chairman Bond requested a status update of the compliance assistance action items in the Aiming for Excellence report. EPA provided this update on March 28, 2000. On October 11, 2000, Chairman Bond requested another update of EPA's progress on achieving its compliance assistance action items in the Aiming for Excellence report. EPA provided Chairman Bond a status update on October 24, 2000. EPA continues to implement compliance assistance items, albeit behind schedule in many cases. Chairman Bond continues to monitor EPA performance in this area to ensure they fulfill their compliance assistance obligations.

H. NITRATES REPORTING ENFORCEMENT

In May 2000, EPA sent out nearly 600 "show cause" letters to facilities which omitted entries for nitrate compounds on their Toxic Release Inventory reporting forms. EPA determined that these facilities failed to report nitrates because they did report using nitric acid, which "coincidentally" produces nitrates upon treatment. EPA told the facilities to show cause why the Agency

should not subject them to \$5,000 penalties for each “sin of omission,” as EPA later described it, totaling up to \$20,000 for four reporting years.

According to EPA, over 50% of eligible facilities failed to report nitrates to TRI. Industry places noncompliance above 80% when facilities attempting to remedy their reports after the fact are excluded. This huge noncompliance rate reveals a problem more fundamental than a small number of “bad actors” intentionally ignoring Agency enforcement alerts. Instead, the most likely reason for this mass noncompliance was that facilities did not know or understand this obscure reporting requirement. This seems likely given that the reporting instructions for TRI run several hundred pages and instructions regarding this issue appear in different sections in different years. Indeed, professional consulting firms paid to know these requirements missed this obligation. Also telling was that over half of those failing to report are small businesses.

While these facilities did not report nitrates, the only way EPA identified them is because they were reporting to TRI. The Agency counter argument that these facilities were reporting while trying to hide the toxic nature of their activities does not make sense. These facilities omitted nitrates but reported nitric acid itself or in many cases more toxic substances such as trichloroethylene.

On May 24, 2000, Chairman Bond wrote to EPA to express his concern over the Agency’s decision to use limited enforcement resources in an area with no direct environmental impact. Additionally, the Chairman noted that other more serious and direct environmental problems existed due to EPA’s failure to renew a sizable percentage of expired water pollutant discharge permits. Chairman Bond suggested EPA target its enforcement resources to cases with more environmental impact and culpability by those involved. Subsequently, EPA offered concerned facilities a greatly reduced settlement amount and closed out the matter.

VI. ASSISTING SMALL BUSINESSES IN PREPARING FOR THE YEAR 2000 DATE CHANGE

A. LEGISLATION

1. *Small Business Year 2000 Readiness Act of 1999*

On January 27, 1999, Chairman Bond introduced the Small Business Year 2000 Readiness Act, S. 314. The bill requires the SBA to establish a limited-term loan program (the “Y2K loan program”) pursuant to which the SBA would guarantee loans made by private lenders to assist small businesses in correcting computer problems that could arise from the Year 2000 (Y2K) date change. The bill permitted small businesses to use loan proceeds for only two purposes. First, a small business could use loan proceeds to correct the problems that could arise from Y2K affecting its own information technology systems and other automated systems. Second, a small business could use loan proceeds to provide relief from economic injuries suffered as a direct result of its own Y2K problems or some other entity’s Y2K problems.

This legislation drew on testimony given before the Committee in 1998, from reports received by the Committee and from meetings held with small business owners, financial institutions, consultants, the Small Business Administration (SBA) and other persons

with an interest in the small business community's efforts to fix their Y2K computer problem. On June 2, 1998, the Committee held a hearing on the impact of the Y2K computer problem on small businesses. The Committee heard from witnesses that the companies most at risk from Y2K failures are small and medium-sized firms, not larger companies. Witnesses testified that this anomaly is caused by two factors. First, many small companies did not realize the extent that the Y2K computer problem could affect their businesses. Second, many small companies may not have the access to capital to cure such problems before they cause disastrous results.

A study entitled "Small Business and the Y2K Problem," sponsored by Wells Fargo Bank and conducted by the National Federation of Independent Businesses echoed this testimony, finding that an estimated four and three-quarter million small employers were exposed to the Y2K problem. The Committee also learned that while many small businesses were likely to be affected by the problem, relatively few had become compliant. The Gartner Group, an international information technology consulting firm in Connecticut, had estimated that only 5 percent of small companies had remediated their Y2K computer problems as of the third quarter of 1998 and that between 50 percent and 60 percent of small companies would experience at least one mission critical failure as a result of Y2K computer problems.

The Committee also received information indicating that many small businesses could face large expenditures to remediate their Y2K problems. A survey conducted by Arthur Andersen's Enterprise Group on behalf of a nationwide small business trade association, National Small Business United, found that to become Y2K compliant 29 percent of small businesses would need to purchase additional hardware, 24 percent would have to replace existing hardware and 17% would need to convert their entire computer system. When then asked about their most difficult challenge relating to their information technology, more than 54 percent of the businesses surveyed cited "affording the cost."

The Committee responded to this information by approving, in the 105th Congress, the Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412, 105th Cong., 2d Sess.) which would have established a loan program specifically designed to assist small businesses in becoming Y2K compliant. While that bill passed the Senate by unanimous consent on September 30, 1998, the House of Representatives did not adopt it prior to adjournment.

So that a loan program specifically designed for the Y2K problem would be available to as many small businesses as possible, the Committee approved S. 314 early in the first session of the 106th Congress. On February 2, 1999, the Committee marked-up S. 314 by a unanimous vote. On March 2, 1999, the bill passed the Senate by a vote of 99-0. On March 23, the bill passed the House of Representatives, without amendment, by a voice vote and the President signed the legislation into law on April 2, 1999 (Public Law 106-8).

2. *The Y2K Act*

On June 9, 1999, the Senate considered legislation (S. 96) to limit damages in civil actions arising out of Year 2000 computer problems. The bill established certain procedural rules to govern all court claims based on the Y2K problems of a private business and set specific limits on certain contract claims, tort claims and class actions. This bill was strongly supported by the small business community which was justifiably concerned that the pervasive litigation expected as a result of the Y2K problem would particularly harm small businesses. Chairman Bond spoke twice on Senate floor urging his colleagues to pass legislation to assist small businesses by establishing procedures to efficiently resolve disputes arising from the Y2K computer problem.

Additionally, in response to concerns raised by the small business community, Chairman Bond co-sponsored an amendment to S. 96 with Senator Gregg to require Federal agencies to waive civil money penalties for blameless small businesses that in good faith attempt to correct their Y2K problems, but nevertheless inadvertently violate a Federal regulation or rule. Most experts that had studied the Y2K problem agreed that regardless of how diligent a business was at fixing its Y2K problems, unknowable difficulties were still likely to arise that may have placed the operations of such businesses at risk. The amendment was intended to ensure that the Federal government did not further punish small businesses that have attempted to fix their Y2K problems, but were nevertheless placed in financial peril because of these problems. On June 15, the amendment was adopted by a vote of 71 to 28. The conference committee included language substantially similar to the amendment in the conference report to H.R. 775, the House's version of the Y2K limited liability bill. The conference report was passed by both the Senate and the House and signed by the President on July 20, 1999.

B. OTHER COMMITTEE EFFORTS

1. *Funding for small business Y2K assistance*

On March 25, 1999, Chairman Bond sent a letter to Senator Gregg, Chairman of the Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, and to Senator Hollings, Ranking Democrat of that Subcommittee, to request an earmark appropriation of \$20 million, in two-year money, specifically for the Y2K loan program established by S. 314. The letter was co-signed by 25 other senators. As a result of the letter, the report to S. 1217, the bill establishing appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the Fiscal Year ending September 30, 2000, clarified that an additional \$20,000,000 for Y2K guaranteed loans was set-aside to permit small businesses to address Y2K compliance issues.

2. *Federal and State cooperation*

On February 16, 1999, Chairman Bond sent a letter to the governor of each state to request their assistance in educating small businesses regarding the Y2K computer problem and about the availability of the Y2K loan program, once the legislation is enacted into law. Additionally, the letter asked for a description of

the activities each state was undertaking to assist small businesses in becoming Y2K compliant and any thoughts each governor may have on the activities the Federal government could undertake to assist their efforts.

3. *Y2K and the agencies*

The Year 2000 (Y2K) computing crisis posed a formidable challenge to all organizations, including the Small Business Administration (SBA). In that regard, the Committee requested that the GAO verify that SBA's mission critical systems are fully prepared for Y2K. The results of the GAO efforts were worrying in that while SBA had undertaken considerable efforts to be ready for Y2K, they had not completed all the work that would reduce the potential exposure of the SBA to a Y2K related failure. The GAO reported that because Y2K efforts were incomplete, that the SBA "lacks reasonable assurance" that its systems were ready for Y2K. The Committee was concerned about the result of the report, and requested that the SBA immediately remedy the situation to the satisfaction of the GAO. In this regard, the Committee required that the SBA report its efforts to the Committee on a monthly basis and Chairman Bond wrote a series of letters to SBA Administrator Alvarez outlining his concerns. By the end of the year, the SBA had rectified most of the issues to the satisfaction of the GAO and the Committee.

At Environmental Protection Agency (EPA), the Committee was concerned that EPA had similarly not undertaken sufficient efforts to ensure that their mission critical systems were fully prepared for Y2K. The Committee worked with the GAO and staff from the EPA Inspector General (IG) to gain a better understanding of the efforts then underway. The Committee hosted two large scale briefings with all interested parties where all Y2K efforts underway at the EPA were discussed. The Committee was satisfied that the EPA had taken all the necessary steps to reduce the likelihood of a Y2K failure at EPA.

VII. FIGHTING FRAUD

A. INTERNET CRAMMING

On October 25, 1999, the Committee held a hearing entitled "Internet Cramming:// The Latest High-Tech Fraud on Small Business" which focused on a scam that has specifically targeted small businesses. The scam occurs when a company engaged in web site creation and hosting places, or "crams," charges for an allegedly "free" web site on the phone bills of small businesses that have not authorized the charges. Typically, the scam begins when a telemarketer contacts a small business and offers to design and host an individually-tailored web site free of charge for a 30-day trial period. Regardless of whether the small business authorizes the service or merely requests more information in the mail, charges for the web site may appear on its next telephone bill. In addition, the web sites usually have little value because they contain limited or inaccurate information about the business, frequently include misspellings, and are not easily located on the Internet.

In response to the hearing, Chairman Bond directed the Committee to include on its web site a description of the fraud and a

list of tips for small businesses to avoid being caught in this scam. Chairman Bond also wrote informational columns about this scam and tips on how to avoid being victimized that were published by the National Federation of Independent Business, International Mass Retail Association, the U.S. Chamber of Commerce and the National Association of Women Business Owners in newsletters provided to their members. Chairman Bond also gave numerous interviews to the media to warn businesses about this fraud.

B. TONER FRAUD

On March 28, 2000, the Committee held a hearing entitled "Swindling Small Businesses: Toner-Phoner Schemes and Other Office Supply Scams," to examine the fraudulent telemarketing of office supplies to small businesses, particularly printer and copier toner. The hearing exposed office supply scams as an extraordinarily widespread problem. The Committee found that the fraudulent sale of toner alone costs businesses and non-profit organizations one quarter of a billion dollars each year. The Committee also found that the perpetrators of this fraud can be very prolific. A single medium-sized telemarketer investigated by the Federal Trade Commission (FTC) defrauded, on average, a small business every 90 minutes of every day for four years.

In response to the hearing, Chairman Bond announced a list of tips for small businesses to avoid becoming a victim of office supply fraud and committed to continuing to work with the FTC to help deter office supply fraud. As part of that effort and in response to testimony at the hearing that the current civil money penalty authority of the FTC is insufficient to deter individuals committing fraud, Chairman Bond wrote FTC Chairman Robert Pitofsky requesting the FTC's views on raising the maximum civil money penalty that the FTC is permitted to claim with respect to violations of section 5 of the FTC Act. On July 6, 2000, Chairman Pitofsky responded by stating that a significant increase in the FTC's civil money penalty authority would signal to the public and the courts that Congress supports the FTC's efforts to obtain compliance with FTC orders, rules and statutes. In addition, Chairman Pitofsky argued that the potential for considerably higher civil money penalties would likely deter violations more effectively.

Chairman Bond communicated with Senator John McCain, Chairman of the Senate Committee on Commerce, Science and Transportation (Commerce Committee), the Committee with jurisdiction over the FTC Act, regarding increasing the civil money penalty authority of the FTC. In response to Chairman Bond's communication, Chairman McCain resolved that the Commerce Committee would consider increasing the FTC's civil money penalty authority in the 107th Congress. Chairman Bond intends on working with Chairman McCain in the 107th Congress to ensure that the FTC has appropriate authority to deter potential violations of Section 5 of the FTC Act.

VIII. SLOTTING ALLOWANCES AND RETAIL COMPETITION ISSUES

As a result of complaints from small manufacturers to Senator Kerry, about potential anti-competitive practices within the grocery industry, Chairman Bond instructed Committee staff to examine

the issue. Slotting allowances are fees paid by manufacturers of consumer products to retailers for the privilege of placing and keeping their products on the retailers' shelves.

As a result of the examination, the Committee became concerned that these fees have become a mechanism by which dominant manufacturers can drive their competition out of the market simply by paying retailers for control of shelf space. Additionally, these fees can permit retailers to demand increasingly significant payments up-front, which can be harmful to both small manufacturers and small competing retailers.

The majority of the small business manufacturers who were interviewed by Committee staff and who had been negatively affected by slotting allowances were reluctant to seek assistance from the FTC because their fear of retaliation was apparently overwhelming. Indeed, many of these same companies were reluctant to even be interviewed by Committee staff. Moreover, many small business owners who were interviewed by Committee staff spoke of marketplace abuses with dubious legality.

After conducting interviews with over 70 small manufacturers, Chairman Bond determined that the Committee should hold a hearing on this issue and such a hearing was held on September 14, 1999. Given the fear of retaliation, it was particularly difficult to get small manufacturers to testify before the Committee. The Committee was successful in securing two small manufacturers to testify, but only with a guarantee of confidentiality. These two witnesses (Witness A & Witness B) testified from behind a screen with voice scramblers. Their testimony and that of a Baltimore Ice Cream manufacturer provided vivid evidence of existing abusive practices in the retail industry.

The second panel focused on industry-wide issues rather than specific experiences. The first witness was Mr. Gregory Gundlach, an Associate Professor from the University of Notre Dame. In analyzing the problem of slotting allowances, Professor Gundlach concluded that while slotting allowances provide some distribution efficiencies, the result is higher consumer prices, less consumer information and fewer consumer choices. The next witness was Mr. Robert Skitol, an antitrust attorney and a former Federal Trade Commission attorney. Of particular concern to Mr. Skitol was exclusive contracts that effectively shut out all competition, which in turn can lead to higher concentration, diminished competition, higher food prices, less innovation and less choice to consumers. The final witness of this panel was Mr. Ken Partch, who is the editor-at-large of Supermarket Business. As a result of surveys carried out by his publication he observed that even the industry is divided as to the rationale for charging the fees. Mr Partch suspected that the real reason for their existence is a desire on the part of the retailer to get a greater amount of the consumers dollar.

The third panel was made up of representatives from associations that are favorable to slotting allowances. The first witness was Mr. John Motley of the Food Marketing Institute (FMI) who outlined the various reasons why retailers charge the fees. The second witness was Mr. Jeffery Schmidt who is an anti-trust attorney and testified on behalf of the Grocery Manufacturers of America and he outlined GMA's position, which is neutral on the issue.

In the aftermath of the hearing the committee received numerous faxes, e-mails and phone calls from all over the country that were supportive of the Committee's efforts. In the months after the hearing, Committee staff interviewed another 130 small manufacturers who provided the Committee with further evidence of marketplace abuses that harm small manufacturers and small retailers. As a result of these communications, the Committee established a working relationship with staff from the Federal Trade Commission's (FTC) Bureau of Competition and made efforts to refer potential cases of anti-competitive practices directly to the relevant staff at the FTC. This process is ongoing.

Chairman Bond also sent a letter on October 20th, 1999 to Robert Pitofsky, Chairman of the FTC, requesting the FTC to examine closely the practical effects of slotting allowances. Chairman Bond requested the General Accounting Office (GAO) to study the practice. Additionally, Chairman Bond requested that the Secretary of Defense brief Committee staff on the existence of such practices at DOD Commissaries and Exchanges.

The Committee expanded their efforts to investigate this practice and started investigating other related practices in other retail industries such as home improvement stores, bookshops. The Committee also focused its efforts on current practices involving the marketing of fresh fruit and produce within grocery stores. The Committee also continued to meet with all relevant associations, including the Food Marketing Institute, Grocery Manufacturers of America, Independent Bakers Association, United Fresh Fruit and Vegetable Association, Western Growers Association, Florida Fruit & Vegetable Association, the Tortillia Industry Association, the National Grocers Association and others, to hear their concerns and to attempt to resolve the difficulties feared by small manufacturers.

In the beginning of the second session of the 106th Congress, it became increasingly clear that the GAO was having problems obtaining the necessary information to respond to the Committee's request. The Committee attempted to assist GAO by asking for help from the trade associations, with only minimal success. At GAO's suggestion, the Committee provided a letter of confidentiality to trade associations who were concerned that corporate sensitive information might be made public as a result of the GAO's investigation. Ultimately, the GAO's efforts produced little information that could assist the Committee.

In response to the Committee's letters, the FTC responded by putting together a two-day workshop on slotting allowances in order to gain a better understanding of the implications of the issue. As a result of that workshop and other efforts to study the problem, the FTC is currently preparing a preliminary report of their findings to be published in February 2001. To voice support for the efforts of the FTC to gain a better understanding of the complex issues Chairman Bond sent a letter to FTC Chairman Pitofsky on the opening day of the workshop. The letter was signed by Senators Bond, Kerry, Kohl, Enzi, Thomas, Shelby and Grassley.

Throughout the second session of the 106th Congress, Committee continued its efforts to gain a better understanding of the implications of the issue. Through its investigations, the Committee became aware that slotting allowances were beginning to cause seri-

ous problems in the produce industry. The Committee undertook a series of interviews with produce industry associations and executives. As a result of these interviews the Committee determined that another hearing was necessary to address the concerns of the produce industry.

The hearing was held on September 14, 2000 and was intended to address produce industry slotting and concentration issues and to provide an update to the efforts of the FTC and the GAO. The hearing's first panel consisted of representatives of the three of the most important produce trade associations in the country. Each witness addressed the concerns within the produce industry regarding the escalating practice of charging slotting fees for produce and, in particular, for loose fruits and vegetables. Each witness on the panel also stated that produce growers and shippers are being asked by retailers to pay off-invoice fees, which are unrelated to actual product cost, merely to continue doing business. The witnesses also addressed how slotting allowances and other similar fees provide up-front profit to the retailer and, therefore, reduce the incentive that retailers have to sell produce to consumers. One witness addressed the price spread issue, whereby the price paid to farmers is significantly lower than the price paid by consumers for their products and another addressed the widespread concerns of the industry as to the effects of retail concentration on suppliers.

In the second panel the GAO testified that they were unsuccessful in gaining the cooperation needed from the industry to conduct a study on slotting fees, despite pledges of confidentiality on the part of the GAO and the Committee. The second witness was from the United States Department of Agriculture (USDA), who testified about the results of a study being conducted by USDA on trade practices in the fresh fruit and vegetable markets. USDA testified that their studies have found that fixed or variable fees and trade allowances have increased in incidence and magnitude over the last five years. The final witness was Professor Gregory Gundlach, who had also testified in the first Committee hearing on slotting allowances. Professor Gundlach testified about the current state of academic and government research on slotting fees, emphasizing that without analyzing transaction-level data, the claims of pro-competitive or anti-competitive aspects of slotting and similar fees cannot be proven. Professor Gundlach also stated that the FTC has primarily focused on how slotting fees can be used by dominant manufacturers to exclude competitors, but the agency has not focused on the effect that retail concentration has on increasing the bargaining power of retailers to demand such fees. Professor Gundlach suggested that this is an important issue that should not be ignored.

As a result of the difficulties in obtaining the necessary information to make hard public policy decision on the effects of these practices, Chairman Bond requested an appropriation for the FTC from the Commerce-Justice-State Appropriations Chairman, Senator Gregg. Senator Gregg was very supportive of the Chairmans request and Congress appropriated \$900,000 to the FTC to allow the FTC to study the issue in sufficient detail to allow the FTC to make a clearer determination of the pro-competitive or anti-competitive aspects of slotting fees and related trade practices. This study began in January 2001 and is expected to take 16 months.

IX. INCREASING SMALL BUSINESS EXPORTING

On December 14, 1999, the Committee held a forum to provide an overview of the barriers small businesses face when exporting and potential Federal solutions. The forum also focused on two specific issues that small business exporters have identified as primary concerns—financing and e-commerce. The Forum helped identify the recommendations to help increase small business exports.

One of the recommendations at the hearing was to provide additional incentives to smaller banks to make export loans. Specifically, it was recommended that the Private Export Financing Corporation (PEFCO), a private corporation owned by commercial banks, industrial corporations and financial service companies, be permitted to purchase the guaranteed portion of SBA-guaranteed loans made under the Export Working Capital Program (EWCP). The Committee acted on such recommendation by including in the Small Business Reauthorization Act of 2000 a change to the Small Business Act to permit the sale of such loans to PEFCO. That act was signed into law on December 21, 2000.

X. CREATING A DIALOGUE AMONG BUSINESSES ON EDUCATION

On May 25, 1999, the Committee held a hearing to discuss the current state of public education, how it affects small business, and how small businesses can contribute to the education of its future workforce. The Committee heard from operators of small businesses, the American Management Association, the National Alliance of Business, the U.S. Chamber of Commerce and a local chamber of commerce that has partnered with its school district to improve the relationship between the business and education communities. After the hearing, Chairman Bond sent a Dear Colleague letter to each senator requesting them to contact the Committee if they were interested in learning more about how businesses can become involved in education or promoting private-sector educational arrangements in their states.

On September 9, 1999, the Committee followed the earlier hearing with a roundtable discussion that addressed the opportunities the business community has to become more involved in improving public education. The roundtable participants consisted of a variety of representatives from education and business associations. Chairman Bond opened the roundtable by noting that studies conducted by the National Federation of Independent Business (NFIB) and the U.S. Chamber of Commerce rate education as the most pressing public policy issue today. Chairman Bond noted that the purpose of the roundtable was to encourage a discussion on this issue and to showcase initiatives that are working at the State and local levels.

To disseminate the best practices of small businesses working with their local educational systems and encourage nationwide implementation of the most successful practices, the Committee requested the GAO to report on the best practices that secondary schools and institutions of higher education use to address the urgent need of businesses for skilled workers. The report is due out in Fall of 2001.

XI. OVERSIGHT OF THE PENSION BENEFIT GUARANTY CORPORATION

A. GENERAL ACCOUNTING OFFICE STUDIES

During 1999, the Small Business Committee began an intense review of the Pension Benefit Guaranty Corporation (PBGC). The first step in this review was to commission a study by the General Accounting Office (GAO) of the PBGC's operational efficiency and effectiveness, with particular emphasis on the PBGC's contracting practices. A letter requesting this study was sent to Comptroller General David Walker on February 16, 1999; the letter was signed by both Chairman Bond and Senator Charles Grassley, Chairman of the Special Committee on Aging. The original study request was further amplified by a March 16, 2000 request from Senators Bond, Grassley, and Breaux for information on the total PBGC human resources (PBGC employees plus contractor staff) and how those resources tracked with the PBGC's changing workloads over time; a further Bond/Grassley letter of July 25, 2000 asked questions concerning the applicability of the Federal Acquisition Regulation (FAR) to the PBGC.

At a September 21, 2000 joint hearing of the Senate Small Business Committee and the Special Committee on Aging, the General Accounting Office unveiled results of these studies. The GAO found that the PBGC's approach to creating Field Benefit Administration (FBA) offices had been relatively ad hoc—creating an FBA office when a large plan failed, in order to keep the pension plan's administrative staff available for resolving the plan. Now that the PBGC has needed to handle fewer large pension plan failures on a crisis-management basis, the GAO found that the PBGC should engage in strategic planning to determine systematically the optimal distribution of FBA offices around the country. The GAO found that, while the PBGC's contracting may meet minimal legal standards, the PBGC could do more to enhance competition in contracting out the management of the FBA offices. The GAO was critical of the PBGC's failure to collect systematic data on each FBA office, to determine the effectiveness of incumbent contractors, and the GAO also was critical of the organizational placement of the PBGC's Contracts and Controls Review Department, which the GAO found was not truly independent under generally accepted government auditing standards.

In a separate request on December 8, 1999, Senators Bond and Grassley requested the Comptroller General to clarify an October 7, 1986 opinion concerning whether the PBGC acted in a fiduciary capacity in its management of trust assets taken over from trustee pension plans. The GAO responded on January 27, 2000, finding that the PBGC did not act as a fiduciary to the extent that it was inconsistent with the PBGC's statutory obligations as a guarantor of benefits. Although the PBGC may be appointed a trustee, its fiduciary responsibility is not "coextensive" with the fiduciary responsibilities of other trustees.

B. COMPUTER SECURITY

On January 11, 2000, Senators Bond and Grassley wrote PBGC Executive Director David Strauss concerning weaknesses in the PBGC's information systems, as revealed in a penetration study conducted for the PBGC Inspector General by

PricewaterhouseCoopers. Senators Bond and Grassley asked Mr. Strauss to prepare a corrective action plan and to submit monthly reports on the implementation of that plan, beginning on February 15, 2000. Senators Bond and Grassley stated that they intended to see all outstanding information security issues resolved by the end of Fiscal 2000.

Mr. Strauss responded with a corrective action plan on February 15, 2000. Senators Bond and Grassley referred it to PBGC Inspector General Wayne Poll on February 25, 2000, for his opinion whether it would satisfactorily address the information security problems. Mr. Poll responded on March 2, 2000, saying that the plan addressed the specific issues identified in his penetration study, but withheld judgment whether it would ensure adequate information security.

Mr. Strauss continued to report monthly on implementation of the corrective action plan, and reported completion on October 13, 2000. On November 30, 2000, Mr. Poll wrote Senators Bond and Grassley that the PBGC's implementation of the corrective action plan "essentially satisfied" his concerns over the reported security weaknesses and that it will "effectively strengthen" the PBGC's overall security program. He identified two items that will require continuing attention by the PBGC's management. Senators Bond and Grassley wrote Mr. Strauss on December 8, 2000, thanking him for the PBGC's hard work in implementing the corrective action plan and for his responsiveness in submitting timely monthly reports. Senators Bond and Grassley requested comment on Mr. Poll's two items that require continuing attention. On December 21, 2000, Mr. Strauss agreed with one of Mr. Poll's two items of concern: that the PBGC's staff be reminded of security concerns frequently, in order to prevent a relapse. On the other point, regarding technical security standards for various PBGC computer platforms, Mr. Strauss responded with a list of actions taken to date as well as actions to be taken in the future to enforce security on a continuing basis.

The status of the PBGC's information security was also a subject of the September 21, 2000 joint oversight hearing by the Senate Committee on Small Business and the Special Committee on Aging. At the hearing, Mr. Poll committed to making a follow-up penetration study. In follow-up correspondence on October 3, 2000, Senators Bond and Grassley re-stated their request for Mr. Poll to conduct a new penetration study, in addition to studying the accuracy of Initial Determination Letters (IDLs).

XII. BANKRUPTCY REFORM

In the 106th Congress, the Senate considered the Bankruptcy Reform Act of 1999. The Act would have amended Chapters 7 and 13 of the Bankruptcy Code to eliminate certain abusive creditor practices and permit courts, in certain circumstances, to dismiss a bankruptcy case or convert a Chapter 7 case to Chapter 13. Of particular interest to the Committee, the bill also amended Chapter 11 of the Bankruptcy Code to expedite and simplify small business bankruptcies. The Committee advocated a balanced approach to Chapter 11 reform that takes into consideration the concerns of both small business debtors and creditors.

In response to concerns of the small business community, Chairman Bond requested Senator Grassley, the sponsor of the legislation, to include an amendment to increase the participation of small business creditors in Chapter 11 bankruptcy proceedings. The amendment permits a court to expand the membership of a creditors committee to include a creditor that is a small business if the court determines that the small business creditor holds claims of the kind represented by the committee and that are, in the aggregate, disproportionately large when compared to the annual gross revenue of the small business creditor. Further, the amendment increases a small business' right to access information considered by a creditors committee. As a result of Chairman Bond's actions, the amendment was included in the final conference report on the bankruptcy legislation that was passed by Congress prior to the end of the 106th Congress. That conference report, however, was subsequently vetoed by President Clinton. In the 107th Congress, the Committee intends to continue to advocate fair bankruptcy law for small business debtors and creditors.

XIII. HEARINGS OF THE COMMITTEE

ORGANIZATIONAL MEETING, MARKUP OF PENDING LEGISLATION, AND NOMINATION OF PHYLLIS K. FONG TO BE INSPECTOR GENERAL OF THE SMALL BUSINESS ADMINISTRATION—WASHINGTON, DC, FEBRUARY 5, 1999

On February 5, 1999, the Committee held its organizational meeting for the 106th Congress. The Committee also held a markup of two bills, and a confirmation hearing and Committee vote on Phyllis K. Fong to be the Inspector General for the Small Business Administration (SBA). Chairman Christopher S. "Kit" Bond (R-MO) prefaced the meeting by welcoming new members to the Committee and emphasizing the bipartisan manner by which the Committee operates as a united voice for small business. He stressed that in the past the Committee has passed "legislation that is very helpful to small businesses, and we intend to continue to do that."

At the outset of the organizational meeting, Chairman Bond set out his broad agenda for the Committee during the 106th Congress. He noted that the main function of the Committee is to oversee "the operation and effectiveness of the SBA, and its credit, procurement, and management assistance for small businesses." Chairman Bond and Senator Kerry John F. Kerry (D-MA), Ranking Member, discussed a shared concern over economic injury loans from the SBA to address the year 2000 (Y2K) computer crisis and the availability of adequate funding for the existing 7(a) loan program. Both agreed that the Committee needs to be sensitive to any disincentive Y2K legislation may have on people trying to prevent Y2K-related problems, and to assure that necessary funding for the existing 7(a) loan program will be available. Other priorities discussed were tax relief for small businesses, 100% deductibility of health insurance for the self-employed, implementation of the Internal Revenue Service Restructuring and Relief Act of 1998, and easing the tax burden on small enterprises.

Chairman Bond proposed one change in Committee Rules for the 106th Congress, which would require witnesses coming before the committee to submit their testimony two business days before the

hearing. Previously, the Committee Rules had required testimony to be submitted 48 hours in advance. This change would allow staff to circulate testimony to Committee Members with more time for review. The Committee Rules were adopted by unanimous consent.

The Committee also discussed that the Committee on Rules and Administration intends to change the Fiscal Year for Senate Committees to conform to the Federal Fiscal Year. As a result, the Committee on Small Business will operate on a transitional budget from March 1 until September 30, 1999, and the Committee will not submit a budget for this period. The Chairman noted that a full-year budget for Fiscal Year 2000 will be submitted for the Committee during the Summer.

Having concluded the organizational meeting, Chairman Bond began the markup of the two bills before the Committee—S. 314, “Small Business Year 2000 Readiness Act” (Y2K bill), and S. 364, the “Small Business Investment Improvement Act of 1999” (SBIC bill). The Y2K bill was introduced to “provide assistance and to direct attention to small business about the need to make their computer and their software systems Y2K compliant.” The SBIC bill provides modifications to strengthen the SBIC program and make it more accessible to small businesses. After discussion by the Committee, with a quorum present, both bills were favorably reported by the Committee by unanimous consent.

Finally, the Committee turned to the nomination of Ms. Phyllis K. Fong to be the SBA Inspector General. After a brief introduction, Ms. Fong provided an opening statement in which she expressed her desire to develop a working relationship with the Committee and to be “independent and responsive to all of you.” She emphasized that one of her priorities, if confirmed, would be to reassess “where the office has been and where we should be going.” She commended the section 7(a) and 8(a) programs and expressed her desire to investigate new initiatives, based on priorities and available resources. Ms. Fong pledged to examine internal operations of the SBA, continually monitor various systems, and to ensure that programs function as intended. She concluded by welcoming the input of Committee Members and their staffs in the activities of the SBA’s Office of the Inspector General. A roll call vote was ordered by Chairman Bond that the nomination of Ms. Fong as Inspector General of the SBA be reported favorably to the Senate, which was approved by the Committee 16 to 0.

ROUNDTABLE—OVERSIGHT OF THE REGULATORY FLEXIBILITY ACT (RFA) AND THE RED TAPE REDUCTION ACT (SBREFA)—WASHINGTON, DC, MARCH 10, 1999

On March 10, 1999, the Committee held a roundtable on oversight of the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA), also known as the Red Tape Reduction Act. The roundtable participants consisted of 28 representatives of small business groups from a wide cross section of the small business community. Chairman Bond noted that the roundtable was intended to ascertain the effect of RFA and SBREFA on government agencies and how they affected small business. Senator Kerry encouraged the participants to express both positive and negative comments with regard to various government agencies and their compliance with RFA and SBREFA.

The first topic of discussion was agency compliance with RFA and SBREFA, which began with a discussion of coverage and applicability. Participants cited concerns with Internal Revenue Service's (IRS) interpretation of SBREFA and expressed the necessity for the IRS to reverse its narrow interpretation of both statutes. They emphasized that the IRS should be looking for ways to ease the burden on small businesses. Other participants commented on the failure of the Health Care Finance Administration (HCFA) and the Environmental Protection Agency (EPA) to comply with certain aspects of RFA or SBREFA. Individual industries reported to the Committee on how their members are affected by Federal agencies and their regulations, as well as legislation passed by Congress.

The roundtable participants then turned their attention to agency rulemakings and judicial review. This segment included such issues as economic analysis, the role of the Office of Advocacy, and experiences with the Occupational Safety and Health Administration (OSHA) and the EPA. The discussion opened with a review of the resources available to small businesses in dealing with various agencies. One participant commented on a deficient Initial Regulatory Flexibility Analysis for OSHA's Safety and Health Program Rule, which was inaccurate and not understandable by those charged with using it when the rule was reviewed by the Small Business Advocacy Review Panel. Another participant raised concerns about agencies making rulings without having any knowledge about how the rulings will affect certain industries. Participants praised the Office of Advocacy for its work on behalf of small business, and they agreed that the office deserved continued support. Some participants contended that more funding is required for the Office of Advocacy, especially in the area of economic research.

The roundtable concluded its discussion of agency rulemakings by addressing the Small Business Advocacy Review Panel process, which was established under SBREFA. One participant listed three problems with the panel process: (1) panels should be convened much earlier; (2) participants on the panel are not getting the data they need to participate fully; and (3) trade association representatives have not been allowed to participate in the panels directly. Other problems were identified with respect to OSHA and EPA, and actions they took during the panel process. Another participant commented that the panel process should emphasize the opportunity for small businesses with 50 or fewer employees to participate.

The roundtable participants also addressed Section 610 of the Regulatory Flexibility Act, which requires agencies to review their regulations to determine their impact on small businesses and whether any changes are in order. Suey Howe, the Committee's Regulatory Counsel, noted that there has been some progress with respect to agencies reviewing their regulations under Section 610. Many of the entries on the Unified Agenda, however, are still not in compliance with the notification required under Section 610(c). According to one participant, businesses need to be given the opportunity to comment on the current rules, and under most circumstances such opportunities do not exist. Another participant commented that the 10-year statutory requirement for review

under Section 610 is not enough for small business; the review should be an annual affair.

The roundtable's next agenda item was compliance assistance. Ms. Howe emphasized that agencies are required under SBREFA to provide informal compliance assistance, and also to provide plain English compliance guides. One participant commented that many agencies are placing too much emphasis on enforcement and are doing a poor job with compliance assistance. More resources should be committed to reaching compliance-assistance goals, rather than punishment techniques. Another problem highlighted was the failure of agencies to make small businesses aware of how to access the compliance assistance programs that are available.

The final topic of discussion for the roundtable was agency enforcement activities. One concern, shared by several participants, was that many small businesses are unwilling to report complete information on enforcement issues to the Small Business and Agriculture Ombudsman for fear of reprisals from agencies that have a great deal of discretion in interpreting regulations. Another problem raised by participants, relative to the Ombudsman program, was the lack of authority for the Ombudsman or the Fairness Boards to resolve problems with issues of enforcement. As a result of these problems, many individuals do not participate in the process. One participant noted that penalty reduction efforts often will not work because businesses are unlikely to disclose violations voluntarily for fear of being targeted for future inspections by the governing agency.

Chairman Bond concluded the roundtable by emphasizing the importance of communication between small businesses and the Committee on the effect that agencies are having on their operations. He added that his goal is to make government more helpful to businesses and to assure accountability of Federal agencies regulating small enterprises.

HEARING—THE PRESIDENT'S FISCAL YEAR 2000 BUDGET REQUEST FOR THE SMALL BUSINESS ADMINISTRATION—WASHINGTON, DC, MARCH 16, 1999

On March 16, 1999, the Committee held a hearing to review the President's Fiscal Year 2000 budget request for the SBA. Chairman Bond opened the hearing by emphasizing the importance of maintaining the strength of the SBA and its advocacy for small businesses. He stressed that the goal of the Committee is to preserve and improve the programs that make the SBA so valuable to small business. He also noted that it was unusual for the SBA to seek Congressional approval of its Fiscal Year 2000 budget request when the agency was unable to provide the Committee with an audited financial statement for its Fiscal Year 1998 expenditures.

SBA Administrator Aida Alvarez provided the Committee with an overview of the agency's Fiscal Year 2000 budget request. She asserted that the proposed budget would fund record levels of loan and venture capital assistance for America's small businesses by building upon accomplishments like the General Business Loan Guarantee program (known as the 7(a) loan program), the Economic Development Loan Guarantee program (known as the 504 loan program), and the Small Business Investment Company (SBIC) program. She also illustrated the potential of the Chair-

man's HUBZone program, which the agency expected to initiate on March 22, 1999.

Chairman Bond raised a number of issues about the SBA's Fiscal Year 2000 budget proposal. He expressed concern about accountability with regards to the SBA's request for an extension from the Office of Management and Budget (OMB) for the agency to submit its financial statements for Fiscal Year 1998. Ms. Alvarez responded that the SBA has not identified any problems to date, but the reason for the extension request was due to the complex nature of the statement. Chairman Bond also raised the question of the magnitude of the errors that the agency's auditor, Cotton & Company, identified in the 7(a) and 504 loan programs as well as the disaster re-estimate calculations that would be included in the financial statements. Greg Walter, SBA Deputy Chief Financial Officer, responded by stating that the errors have no budgetary impact since they were in the re-estimate process, not the original estimates that the agency prepared for the current year.

The Members of the Committee questioned the Administrator about the SBA's Fiscal Year 2000 budget proposal. Chairman Bond questioned the implementation of a hiring freeze. Ms. Alvarez responded that the SBA has been under a hiring freeze for five of the last six years, although the agency had filled 200 new positions during the past Fiscal Year. She continued by stating that the SBA proposed \$10 million less in spending for salaries and expenses in Fiscal Year 2000, and the agency wanted to be able to manage that level of appropriations.

In addition to commentary on various aspects of the budget request, Ms. Alvarez testified that the Women's Business Centers are operating under legislation that was adopted last year, which extended to five years the time period for providing grants. She noted that many of the Centers are approaching their fifth year, which requires more Federal support. John Gray, SBA Associate Deputy Administrator for Capital Access, testified that the SBA's asset-sales program anticipates selling all held assets while developing a hold model within the agency. Senator Kerry voiced concerns that the initial asset sales not become part of the subsidy-rate calculation.

Following the testimony from the SBA representatives, the Committee heard from a panel of small business stakeholders. Mark Barbash, President, National Association of Development Companies, and Executive Director, Columbus Countywide Development Corporation, emphasized that the recovery rate on the 504 loan program is decreasing, not increasing, and that the subsidy numbers are what drives the SBA to make the 504 loan program cost effective for borrowers and ultimately for the taxpayers. Deryl K. Schuster, Chairman, National Association of Government Guaranteed Lenders, and President, Mid-America Division, Business Loan Center, testified that funding for the 7(a) loan program for Fiscal Year 2000 will be approximately \$11 billion. He stated that the Administration continues to use excessive default and repurchase estimates and stressed that as a result of the SBA's over-estimated subsidy rate, the 7(a) loan program has generated \$851 million in losses since credit reform in 1992, including \$513 million in the last year based on the SBA's 2000 budget.

Agnes Noonan, Executive Director, Women's Economic Self-Sufficiency Team, testified that the Federal government has invested in an infrastructure of women's business centers throughout the country. She stated that the SBA's Office of Women's Business Ownership (OWBO) has extended 65 grants since 1988, which has provided funding to 79 women's business center sites in 36 States, the District of Columbia, and Puerto Rico. She testified that Federal funding is critical to building a strong network of women's business centers. To achieve that goal, she recommended that centers reaching the end of their five-year cycle and centers no longer funded by OWBO be allowed to re compete for funding on a five-year cycle subject to performance reviews.

With respect to the SBA's proposals on Small Business Development Centers (SBDCs), Max E. Summers, State Director, Missouri Small Business Development Centers, on behalf of the Association of Small Business Development Centers, testified against the agency's proposal to impose fees on SBDCs. He stated that last year 42% of the SBDCs' counseling clients were women and 22% were minorities. Overall they help their clients acquire over \$3 billion in loans and capital each year. Mr. Summers testified that reducing Federal funding for this program by 25% as proposed by the SBA would result in the loss of Federal and matching funds critical to small enterprises.

HEARING—BURIED ALIVE: SMALL BUSINESS CONSUMED BY TAX FILING
BURDENS—WASHINGTON, DC, APRIL 12, 1999

On April 12, 1999, the Committee held a hearing to examine the paperwork and compliance burdens that the current tax system imposes on small businesses and the self-employed. In his opening statement, Chairman Bond noted that most small business owners do not mind paying their fair share of taxes, but they do mind the countless hours of keeping the records, filling out the forms, and worrying that they did it all correctly. He pointed out that for more than three quarters of small business owners, the bulk of these tasks are performed by professional tax preparer, which cost small business owners thousands of dollars that could instead be reinvested in their businesses. Additionally, the Chairman questioned how a small business owner is supposed to know which forms and schedules are necessary, let alone how to complete them accurately, and where that entrepreneur is supposed to find the time it all takes and still be able to keep the business afloat.

Chairman Bond explained that the hearing was based in large part on his July 20, 1998, request to the General Accounting Office (GAO) that it identify the filing and reporting requirements that place significant burdens on small businesses. In his request, he also asked the GAO to comment on ways that these burdens could be reduced or eliminated without compromising overall compliance with the tax code.

The hearing consisted of three panels, the first of which included two small business witnesses. Brian Gloe, Co-CEO, Rosse Lithographing Company in Kansas City, Missouri, testified that his company makes of a minimum of 186 filings with the Internal Revenue Service (IRS) each year. He emphasized that the cost of tax recordkeeping and reporting are approximately \$72,000 a year, which accounts for more than 16% of the company's net income.

The Committee also heard from Roger Harris, President, Padgett Business Services, who documented the burden of hiring a single employee, which can entail as many as 31 Federal forms and 25 forms in a state like Georgia. He also testified about the overall compliance burdens that small business owners must master including depreciation rules, alternative-minimum taxation, estimated taxes, as well as the added burdens that occur if the business is selected by the IRS for an audit.

On the second panel, Margaret Wrightson, Associate Director, Tax Policy and Administrative Issues, GAO, presented the results of GAO examination of tax filing and reporting burdens requested by the Chairman. The GAO testimony revealed that a small business owner faces more than 200 IRS forms and schedules that could apply in a given year. These forms contain more than 8,000 lines, boxes, and data requirements, and are accompanied by more than 700 pages of instructions, which does not include the tax code, regulations, rulings, and countless other guidance that the IRS issues. The Committee also learned that 76% of small business owners hired a tax professional to file their tax returns in 1995 (the most recent IRS data available), and that more than 350,000 small businesses were audited in 1995—nearly twice the rate of non-business taxpayers. Even more troubling, the GAO reported that more than 37% of small business audits resulted in no additional taxes or penalties.

The final witness at the hearing was Charles O. Rossotti, Commissioner of the Internal Revenue Service, who reviewed the agency's modernization plans, which will include a division dedicated to small businesses and the self-employed. He also described a number of initiatives the IRS is undertaking to improve the current system, while the new small-business division is being developed. Mr. Rossotti emphasized to the Committee that the long-term goal of the IRS is to organize the whole IRS into operating units that have specific responsibility for serving different groups of taxpayers, including small business, in order to provide top quality customer service.

Following the Commissioner's testimony, Chairman Bond raised the issue of subjecting all the IRS' forms, publications, and letters to a common-sense review in an effort to provide more user-friendly communications for taxpayers. The Commissioner agreed that such an endeavor would be useful, and he committed to redrafting the worst offending documents if the Committee could help identify them. Subsequently, on May 26, 1999, the Chairman unveiled the "IRS Paperwork Unpopularity Poll" on the Committee's webpage. In his letter to the Commissioner announcing the poll, the Chairman noted that it was designed to collect information about the IRS forms, schedules, instructions, publications, letters, and notices most in need of common-sense review and revision. He also stressed that "There is much that the IRS and Congress need to do if we are to reduce the tax filing and recordkeeping burdens that small businesses encounter every day. This common-sense review of IRS forms and other documents is a first step, and one that could have far-reaching benefits for small-business owners across the nation."

ROUNDTABLE—OFFICE OF ADVOCACY AND SBIR/STTR PROGRAMS—
WASHINGTON, DC, APRIL 21, 1999

On April 21, 1999, the Committee held a roundtable to review the SBA's Office of Advocacy and the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. Chairman Bond prefaced the roundtable by stressing that the Office of Advocacy provides a critical voice for small business within the Administration. He also noted the success of the SBIR and STTR programs, which is evident through the thousands of small firms that have received research grants under the programs since 1982. The Chairman pointed out some concerns with respect to the programs, including the success of firms receiving multiple SBIR grants to commercialize their technologies and the geographic concentration of the SBIR awards in a few states.

The roundtable began with participants focusing on the SBA's Office of Advocacy and its importance for small business. Todd McCracken, President, National Small Business United, emphasized that the Office of Advocacy serves an important role in the regulatory process by expressing the concerns of small businesses with regard to regulators. Many of the participants offered support of a separate budget line item for the Office of Advocacy in order to ensure its independence, stabilize staffing, and provide funding for economic research. Chief Counsel for Advocacy Jere Glover agreed that the Office of Advocacy would be strengthened with legislation that specifically addresses the independence of his office. Brad Frisby, Assistant General Counsel, National Mining Association, emphasized that the dedication of more money to the Office of Advocacy is an investment that would result in better regulations to the benefit of all small businesses.

During the participants' discussion of the SBIR and STTR programs, Milt Stewart, President, Small Business High Technology Institute, stressed that the SBIR program is a success because it has established a basis for collaboration between small business and the collective group of universities, Federal government, large companies, venture capital and commercial banks. He and other participants urged Congress to adopt an authorization level that reflects the importance of this program in the upcoming Fiscal Year's appropriations bill.

Robert Weiss, Chairman, Physical Sciences, Inc., remarked on the geographic distribution of the SBIR and STTR programs. He stated that small firms and universities have a very broad geographic distribution. In addition, the reason for lower awards in many states is that they have submitted fewer proposals. Chris Busch, SBIR Consultant, concurred with Mr. Weiss and went on to state that Congress should sustain the current SBIR outreach. He stressed that the outreach program should be increased and enlarged in an effort to involve small businesses in rural states. Rob Risser, CEO, Picometrix, and Chairman, Small Business Technology Coalition, stated that the ability and need to reach out to subcontract with universities across the country is based on the specialty, not geographic location, and is a necessary way of business for technology-based companies.

Dan Hill, Director, SBA Office of Technology, described the outreach activities occurring on a number of different fronts in several

states. Jon Baron, SBIR Program Manager, Department of Defense (DOD/Defense), remarked that Congress should not look just at who gets the SBIR funds, but also at who benefits from the resulting technologies.

ROUNDTABLE—SBA'S 7(A) AND 504 LOAN PROGRAMS—WASHINGTON,
DC, APRIL 27, 1999

On April 27, 1999, the Committee held the second in a series of five roundtables to discuss the programs and policies of the SBA. According to Chairman Bond, this series was intended to provide information for the Committee, the Members, and the staff as they prepare for the reauthorization of SBA programs and continue the Committee's oversight of the agency. The present roundtable focused on the two major loan programs administered by the SBA—the Guaranteed Business Loan program (known as the 7(a) loan program) and the Development Company Loan program (known as the 504 loan program). In Fiscal Year 1999, these two programs will guarantee loans totaling in excess of \$12 billion to more than 40,000 small business borrowers.

In his opening statement, Chairman Bond explained that both 7(a) and 504 loans were designed to make credit available to small businesses, despite tight economic conditions that often preclude banks from offering higher risk loans. Despite the economic prosperity of the last decade, the loans continued to serve small businesses whose credit needs were unmet by traditional financial institutions. The roundtable discussions were intended to bring to light many key issues affecting the 7(a) and 504 loan programs.

Overall, the roundtable participants expressed their support for both loan programs and offered recommendations for improvements. Deryl Schuster, President, Mid-America Division Business Loan Center, raised the issue of loan prepayments. Recently, an increasing number of borrowers have been prepaying their loans, adversely affecting the subsidy rate. Prepayment often occurs when companies withdraw early from their loans and refinance through other lenders that offer fixed-rate loans and lower fees. As a result, only borrowers who are unable to refinance, frequently due to poor fiscal health, keep their SBA loans, which could cause an increase in the credit subsidy rate. Tony Wilkinson, President and CEO, National Association of Government Guaranteed Lenders (NAGGL), proposed that a penalty be imposed for prepayment of loans of 15 years or longer, with the SBA benefitting from the resulting revenue. Prepayments cause a contraction of the availability of funds that the SBA can lend to other small businesses, and the imposition of a prepayment penalty would counteract this trend. Frank Swain, Partner, Baker & Daniels, suggested that educating borrowers regarding loan refinancing is a public policy issue since there are fiscal disadvantages to the borrower in rapidly refinancing loans due to closing costs. He also proposed that a prepayment penalty should apply only to businesses that prepay within the first three years of the loan period.

The participants also addressed the subject of the programs' credit subsidy rates and re-estimate of the rates. Patricia Forbes, the Committee's Democrat Staff Director, noted that the credit-subsidy model currently in use consistently overestimates the capital needs of SBA loans. As a result, the agency must fight annually for

the appropriation of extra funds that it will merely return to the Treasury at the close of the Fiscal Year. She proposed that this process could be avoided by lowering the default estimates in accordance with the corrected, year-end figures. Mr. Schuster cautioned, however, that the subsidy rate cannot be decreased so much that in times of economic difficulty there will be insufficient funds to support small businesses. He advocated the establishment of a floor on subsidy-rate levels.

Lyle Frederickson, Senior Vice President, 1st Capital Bank, raised the topic of guarantee fees. These fees subsidize the loan programs, but in their present form they are burdensome for lenders to collect. Also, because they are an additional, monthly charge on the loan, the fees cause an increase in the frequency of prepayments. He recommended that the fee be converted to a one-time payment that would be charged when the loan was closed, decreasing both collection costs and the number of prepaid loans. It was also suggested that the fee could be paid at the beginning of the loan. James Hammersley, Director of SBA's Secondary Market Sales and 504 Sales, countered that a fee collected at the time of the loan's drafting would perhaps inhibit some companies from obtaining loans.

With regard to the secondary loan market, Donna Faulk, Vice President, Mortgage-Backed Securities, Prudential Securities, noted that a gray area exists concerning refunding the premium to the purchaser in the event that the investor has prepaid using a premium pool security. In the present system, if a broker consolidates individual loans into premium pools, the premium is not refunded to the borrower but is instead placed by the SBA into the master reserve fund and used to pay delinquent loans. John Cox, Government Affairs Manager, National Tooling and Machining Association, recommended that the "new market lending program" proposal target particular geographic regions to encourage growth. In addition, he suggested that the program continue to rely on current lenders, rather than endeavor to attract new ones.

With respect to the 504 loan program, Richard Jeffrey, President, National Association of Development Companies, recommended that the maximum size for debentures should be increased due to the effects of inflation. Presently the ceiling for regular debentures is \$1 million, with \$1.3 million allowable for public policy areas (achieving national objectives such as expanding exports, increasing minority business development opportunities, developing rural areas, revitalizing business districts). He also submitted that the category of women-owned businesses should be added to the list of public policy areas.

In addition, Mr. Jeffrey suggested increasing or continuing authorizations for the Certified Development Companies (CDC) program and extending the sunset date on 504 loans for another three years. He also advocated establishing a new permanent loan liquidation program for the CDCs and making permanent the Premier Certified Lender (PCL) program, which permits loans to be processed in a relatively short period of time with reduced SBA involvement. Participants criticized the April 2, 1999, regulation that prohibited CDCs from receiving referral fees from participating third-party lenders because it did not allow the CDCs to be compensated when they have in fact performed a service for the bor-

rower. With respect to multistate expansion, it was clear that the absence of regulations governing the practice had led to some confusion—the guidelines do not prohibit such expansion, but neither do they outline how to proceed. The SBA's current policy is to allow all previously expanded CDCs to remain in their enlarged territories.

ROUNDTABLE—SMALL BUSINESS ROUNDTABLE ON SBA'S SBIC AND MICROLOAN PROGRAMS—WASHINGTON, DC, MAY 12, 1999

On May 12, 1999, the Committee held the third in a series of roundtable discussions to examine the programs of the SBA. The focus of the roundtable was the SBA's Small Business Investment Company (SBIC) and Microloan programs. The roundtable participants included a variety of small business representatives with experience operating within these programs, in particular those involved in venture capital. Chairman Bond opened the discussion by reviewing the history of the SBIC and Microloan programs. He noted the importance of adapting these programs to meet the needs of borrowers/recipients, while maintaining efficiency since they are funded through taxpayers' dollars.

Initially, the roundtable participants focused on the importance of equity investment to small businesses, and there was general agreement that the SBIC program has been a successful force in bringing these equity investors to the small business community. Don Christensen, SBA Associate Administrator for Investment, pointed out that the Administration's budget request for the SBIC program of \$27 million for Fiscal Year 2000 would allow for \$3.4 billion to be invested through the SBICs into the small business community. Several participants stressed the need for some of this funding to be focused in low-to-moderate-income rural and urban areas. Mr. Christensen also discussed the Administration's New Markets Venture Capital program, which he explained would solicit proposals from venture capitalists who would bring profit-making companies into low-to-moderate-income areas.

The participants then turned to a discussion of the traditional factors for ensuring future success of the SBICs and their investments. Small business investors explained how they placed their own staff in these companies to give real hands on help since many entrepreneurs need much more than just financial backing. The participants also applauded the SBA for realizing that technical support is of major importance. In addition, equity and technical support must work together in order for an investment in a small business to be successful. Several participants also raised issues concerning the SBA's regulations on control, noting that venture-capital companies are restricted in taking any real control over a company if they use SBIC money. Although venture-capital companies argue that accomplishing their financial goals is possible, regulations on control are a significant nuisance. Participants urged that the purposes of the Small Business Investment Act should be reexamined with respect to this issue.

The discussion turned to the obstacles that prevent investment in low-to-moderate-income areas. Ray Moncrief, Executive Vice President, Kentucky Highlands Investment Corp., stressed that the Committee must understand that investors' motives are not simply goodwill, but to produce a profit. Last year the SBICs made \$600

million worth of investments in low-to-moderate-income areas with the average investment exceeding \$1 million. This data shows that there are examples of successful investment in low-to-moderate-income areas, but these successes have usually been in large, traditional companies that have a low degree of risk. Participants stressed that investors believe that any investment in these areas must be sound, so that they produce jobs and a profit.

Participants noted that one major problem was getting the necessary technical assistance in these low-to-moderate-income areas. Participants questioned how to attract qualified personnel to work in these areas, and how to locate and persuade investors to invest in rural areas where the return may only be moderate. Examples were given of lawyers and doctors who have gone into low-to-moderate-income communities to provide non-profit help. But as one participant pointed out, these examples of generous people are few and far between. All of the participants agreed there needs to be an economic reason to encourage long-term, consistent investments in these areas. Participants suggested that tax credits were one incentive that would be a credible way to start investing in low-to-moderate-income areas. Another option was a low-to-moderate-income debenture program, which would ease or eliminate interest payments between the SBIC and the SBA for the first few years. This option, however, would not exempt small businesses receiving the investment from making interest payments to the SBIC.

The final topic that the roundtable addressed concerned the Microloan program, which the participants generally deemed a success. Several participants, however, called for a change to the program's \$25,000 loan cap. This restriction was put into place in 1991, but it was never adjusted for inflation or changes in the small business marketplace. The participants argued that the cap should be increased to \$100,000, which would allow for the technical and general assistance needed to cover the cost of starting a business in today's market.

ROUNDTABLE—SMALL BUSINESS ROUNDTABLE ON SBA'S MANAGEMENT ASSISTANCE PROGRAMS—WASHINGTON, DC, MAY 20, 1999

On May 20, 1999, the Committee held the fourth in a series of roundtables to review the SBA's programs. The present roundtable focused on the SBA's management assistance programs. Chairman Bond prefaced the roundtable with an overview of these programs, which include the Small Business Development Centers (SBDCs), the Service Corps of Retired Executives (SCORE), and the Women's Business Centers. The Chairman noted the successes of the programs and expressed confidence that the programs would continue to provide valuable assistance to small businesses in the future.

The roundtable began with a review of the SBDC program. Woodrow McCutchen, Executive Director, Association of Small Business Development Centers, opened the discussion by noting his concern that the SBDC program would face a dismal future if the proposed budget cuts for this program were enacted. He explained that the SBDC program is based on matching funds from the private sector. As a result, every dollar cut from Federal funds for SBDCs will lead to a loss of private-sector funding. Mr. McCutchen expressed his belief that a reasonable budget for the program should be \$98 million.

The participants then addressed the merits of instituting a small fee that small businesses could pay SBDCs for counseling. Some participants raised concerns that such fees would only hurt the program because they would lead to paperwork and accounting costs and small businesses in need of counseling would likely shy away from the using SBDC services if a fee were imposed. Other participants remarked that a fee would prompt small businesses seeking counseling to be more prepared on their first visit to an SBDC, by having, for example, a business plan or solid ideas. The participants in favor of a fee also asserted that any paperwork or accounting problems that the SBDC might incur could be overcome by the SBDCs given their business expertise.

The SCORE program was the next topic of discussion for the roundtable. Emmett Gumm, President, SCORE, reviewed a number of the program's recent successes, and he noted that the program is run by 12,000 volunteers, with only 13 paid employees. He asserted that SCORE needs an increase of \$1.5 million primarily to enhance its Internet services. Its web page, which receives more than 1.3 million hits a month, allows counselors to work with people all over the country without the additional cost to travel. In fact, the program conducted 6,000 free e-mail counseling sessions in April 1999 alone. SCORE's Board of Directors plans to restructure the program so the Internet becomes an even bigger part of its overall resources.

The final subject considered by the roundtable participants was the Women's Business Centers program. Andrea Silbert, President, Association of Women's Business Centers, reviewed the program and noted that helping women-owned businesses comes from three different areas—the SBA's Office of Women's Business Ownership (OWBO), National Women's Business Council, and the Association of Women's Business Center. Participants noted that the Women's Business Center Program had the greatest need for strengthening, primarily through accreditation. Several participants stressed that reporting by SBDCs, SCORE, and Women's Business Centers should be on a consistent basis in order to provide a uniform standard by which all programs could be evaluated. Discussion also centered on the Women's Business Centers' web site and some of the problems surrounding its implementation, including retaining technical staff. There were also difficulties with the web site initiative in matching counselors and clients in the same region, thereby allowing the counselor to assist the client adequately at the local level as well as through Internet counseling at the national level. Committee staff offered numerous suggestions on how the Women's Business Centers could handle the Internet counseling.

Final Committee staff comments suggested that the three organizations work together on their Internet struggles with each contributing to and learning from the others what they have accomplished.

ROUNDTABLE—SMALL BUSINESS PROCUREMENT—WASHINGTON, DC,
MAY 20, 1999

On May 20, 1999, the Committee held the fifth in a series of roundtables on the programs of the SBA. The present roundtable focused on small business procurement and was attended by participants representing women and minority small business owners

and American Indian business groups. Chairman Bond opened the roundtable by noting that the Federal goal for procurement from small businesses is 23%. He expressed his disappointment with the government's failure to meet this goal and the continued practice of contract bundling by Federal departments and agencies. Both Chairman Bond and Senator Kerry expressed their expectation that the roundtable would raise proposals and suggestions on how the SBA could increase the level of procurement contracts awarded to small businesses.

The roundtable began with a discussion concerning the need for the SBA to enforce the regulations intended to promote Federal procurement for small businesses. Several participants stated their dissatisfaction in the SBA's failure to live up to its responsibility of assisting small businesses in the Federal procurement area. The SBA participants asserted that the small business procurement statistics were extremely skewed because of the erroneous inclusion of certain large contracts. The SBA representatives also noted that contracts under \$25,000, which total \$9 billion, were also excluded from the statistics. As a result, by omitting the large contracts and adding back the small-size contracts, they contended that the percentage of Federal procurement to small business would be much higher.

Participants on both sides of the issues maintained that different Federal departments and agencies were using disparate regulations to decide which contracts go to small businesses. The SBA representatives argued that in many instances a Federal agency will contract with a small business and will be satisfied with its work. Thereafter, the agency will want to use that small business again instead of offering a subsequent contract to a new small business.

The discussion shifted from the SBA's handling of Federal procurement to a more general evaluation of the SBA's customer service. Participants expressed concerns that SBA employees are merely career government employees who care little about the small businesses they are charged with serving. Participants also expressed frustration with the high level of bureaucracy that many small businesses encounter when dealing with the agency. The SBA representatives affirmed the agency's policy of encouraging dissatisfied small businesses to contact a supervisor about their complaint, which ensures a response from the agency.

The roundtable moved onto the issue of women small business owners. Several participants called for women-owned businesses to be considered with the same presumption of social disadvantage as minority-owned firms. Several women business owners explained situations in which they were excluded or discriminated against by different Federal agencies. The SBA is charged with enforcing a goal that 5% of Federal procurement goes to women-owned small businesses, although that goal has not been met since it became law in 1994. Several solutions were mentioned, including teaming different women-owned businesses together so they could handle large Federal contracts. Overall, the participants remarked that the SBA needed to improve its enforcement of procurement requirements.

Other general problems discussed by the roundtable participants were contract bundling, paperwork, and certification. Contract bundling is a critical issue for many small businesses. Participants

noted that when a government agency takes several projects and accepts bids on the total cost of the projects, only large firms will bid because they alone have the capacity to handle the entire job. While contract bundling helps the Federal government save costs, the participants echoed the Chairman's reflection that Federal law and policy are intended to direct a significant portion of government procurement dollars to small businesses. The participants noted that the Federal small business procurement goal has not been reached, and some participants expressed the need for the SBA to do a better job in reaching that goal.

The roundtable participants noted that minority-owned business certification is a difficult process to maneuver. There was general aggravation among the participants by all of the paperwork involved because it often led nowhere and at a high cost. In addition, participants were frustrated at the many different levels of certification that are usually required of a small business—Federal, state, and local. There was some recognition, however, that the certification process was necessary to prevent fraud and waste of taxpayer dollars. Committee staff also expressed interest in streamlining the certification process.

The final issue addressed at the roundtable was the role of tribal communities in the HUBZONE program. Participants remarked that the existing strict guidelines unfairly keep tribal-owned small businesses out of the HUBZone program. There was general agreement that the tribal communities and tribal-owned small businesses should participate in the HUBZone program. Several participants offered suggestions for statutory changes to make such participation possible. Participants also focused on the issue of modifying the HUBZone program to include Alaskan Natives.

HEARING—EDUCATION SUCCESS = BUSINESS SUCCESS—WASHINGTON,
DC, MAY 25, 1999

On May 25, 1999, the Committee held a hearing to discuss the current state of public education, how it affects small business, and how small businesses can contribute to the education of its future workforce. Chairman Bond prefaced the hearing by emphasizing the importance of education in our society, the consequences of an uneducated child, and how the state of the nation's schools significantly affects Americans' futures. He pointed out that, "education is vital for our own peace and security and it is vital to our business success." Senator Kerry concurred and raised concerns as to how prepared high-school graduates are for the modern work force.

The first panel emphasized the overall decline in the basic skills of students entering the workforce. Eric Rolfe Greenberg, Director of Management Studies, American Management Association, reviewed research by his organization. This research was based on surveys of the association's 10,000 member companies. He listed three primary reasons for a recent decline in worker employability. First, a greater share of employable Americans are working when qualified talent is comparatively scarce, so companies must sift through a larger number of applicants to find workers with necessary skills. Second, the increasing number of applicants for whom English is a second language has contributed to the decline. Third, the increasing complexity and technical nature of the actual work to be performed has reduced the pool of employable workers. Mr.

Greenberg offered two solutions to these problems. Businesses must conduct training and skill development to give employees the skills they do not have. In addition, the business community must provide ongoing support to local elementary and secondary educational institutions.

Mr. Greenberg went on to describe business involvement in local schools conducted by members of his organization. One corporation runs an on-site Kindergarten, while another corporation operates, a school with children from Kindergarten through Fourth Grade. Chairman Bond emphasized the need for supporting education for children from the time of birth until they reach school age, as well as once they begin attending formal schools. He cited as an example the success of the "Parents As Teachers Program," which he began in Missouri. Senator Kerry emphasized the need for business leaders to work with local schools to prevent graduates from being unskilled, while Senator Snowe highlighted the success of the "Jobs for America's Graduates Program."

The second panel focused on efforts of businesses and communities to meet the demands of the economy and the needs of students. Carol L. Ball, President and CEO, Ball Publishing, Inc., emphasized that many high-school graduates lack basic job skills, in addition to being deficient in reading, writing, and math. She also stated that the Chamber of Commerce, in relation with its state and local affiliates, has worked hard to communicate best practices especially to small businesses (less than 100 employees). These best practices have proven to be beneficial to businesses in regard to the hiring of employees and training them in an ever-changing world. Barbara Seisler Goodling, Secretary/Treasurer, Albert Seisler Machine Corporation, addressed the problems her business and other small businesses have had finding employees who have basic reading and math skills and who can be relied upon to take responsibility for themselves. She also discussed efforts by local businesses to remove barriers for many workers seeking employment, such as providing day care, transportation, and matching employees' skills with potential jobs.

Edward B. Rust, Jr., Chairman and CEO, State Farm Insurance Companies, and Chairman, National Alliance of Business, discussed the role of businesses advocating state-level policy initiatives to improve elementary and secondary education. Among their goals is to improve the quality of teachers, upgrade standards and contents of math and science education, integrate technology, and support quality management. His organization sponsors business roundtables, involving members of business and education communities, which have led to business-education coalitions in 42 states. The National Alliance of Business is seeking to incorporate the business principles of the Baldrige Quality Management Criteria, sponsored by the Department of Commerce, into education at the state, local, and school level in an effort to increase student performance. He concluded his testimony by advocating that the Federal government give greater flexibility to states and local school districts while maintaining their accountability.

Kelly Fujiwara, Chair, Education Committee, Lexington/Rock Bridge (VA) Chamber of Commerce, described a business-education partnership program in effect in Rockbridge County, Virginia. The program entitled "Prep 2000," was designed to provide businesses

with information as to the academic preparation of job applicants and to create a forum for educators and business leaders to communicate their limitations and expectations. The program also allows students to become more familiar with the business community through luncheon programs and rewards high achieving students with scholarships. The program has been successful in enhancing the relationship between the schools and the business community. She suggested that improvement can be made by including middle schools in the services provided and by encouraging businesses to use the program as a screening tool to identify potential employees.

Chairman Bond asked a series of questions of the panelists to address specific concerns. He emphasized the need to hold students accountable for their actions and for a reprieve on schools from burdensome Federal mandates. He also raised concerns about the Federal government deciding how success is measured, emphasizing local answers as opposed to national mandates.

Chairman Bond concluded the hearing by stressing that another Federal law or mandate was not the solution to America's educational concerns. He stated that "we have got to transfer and identify that responsibility, going back to the local community," emphasizing that businesses need to be encouraged to get involved in an educational system upon which they are so dependent.

FIELD HEARING—SMALL BUSINESS AND ENVIRONMENTAL TECHNOLOGIES: THE CHALLENGES AND OPPORTUNITIES—BOSTON, MA, JUNE 14, 1999

On June 14, 1999, the Committee held a field hearing in Boston, Massachusetts on small business and environmental technologies. Chaired by Senator Kerry, the hearing focused on issues in the marketplace concerning environmental change, environmental enforcement, and environmental technologies. He noted that enforcement of environmental regulations has given birth to many new technologies, 90% of which are originating from small businesses, although in recent years the amount of investment and new technologies in this area has slowed significantly.

The first panel consisted of small business owners who have used environmentally friendly practices in their businesses. The witnesses expressed their appreciation to the government agencies that have helped them create environmentally friendly businesses. In particular, the witnesses praised the EPA's Office of Technical Assistance for helping small businesses achieve compliance with environmental regulations. In addition, both witnesses noted that implementation of new environmental practices had led to an increase in productivity and a strong rate of return. Douglas DeVries, Environmental Manager, Hyde Manufacturing Company, which manufactures hand knives and machine blades, testified that his company has had on average a 66% rate of return on its investments in new technologies that have helped his company become environmentally friendly. He offered as one example of such technology the development and use of a metal working fluids program that has decreased the discharge of coolants from 140,000 gallons per year to zero gallons in each of the last eight years. Mr. DeVries and Dennis Prifti, Co-Owner and General Manager, Fit To Print, noted that implementing new environmentally friendly technology

has been less costly and entailed less downtime than originally anticipated. Both witnesses were confident that other small businesses would have similar successful experiences.

The witnesses on the second panel represented firms that develop new technologies in the environmental field. The witnesses emphasized the importance of government grants from the SBA's SBIR program. They noted that while the SBIR program helped them launch and maintain their companies, the program was less beneficial when it came to trying to achieve the goal of developing marketable products. The witnesses also identified as an overall regulatory problem the many different levels of authorities with which a company must comply in order to develop new environmental technologies, and the fact that few of them utilize the same standards. The panelists concluded by noting that they saw a bright future for the environmental industry, based in part on their prediction of strict regulations on emissions and the discharge of pollutants, which will force the market to develop new technologies so that small businesses can comply with such new regulations in a cost-effective manner.

The final panel consisted of a witness from the U.S. Department of Commerce (DoC) and one representing the National Small Business United (NSBU) and the Smaller Business Association of New England. Kelly Carnes, Deputy Assistant Secretary of Technology Policy, DoC, reviewed some successful and some disappointing numbers with respect to the environmental industry. On the positive side, Ms. Carnes noted that the environmental industry is a \$186 billion industry, which employs 1.3 million Americans. It includes 33,000 companies in the private sector, 99% of which are small businesses, that generate \$18 billion worth of export revenue per year with a trade surplus in excess of \$9 billion. The disappointing figures are those that show the downward spiral in which the industry is caught. For example, in 1990 there were more than \$200 million of venture-capital investments in the environmental industry, as opposed to only \$30 million in 1996. While the NASDAQ is appreciating at 22% annually and the Dow is increasing at 16%, the environmental industry is only gaining 6% annually. Of the total global market, American firms control only 10% of the market while French and German companies have 20%. The witnesses made several recommendations on how to stimulate the environmental industry and the public to implement new environmental policies and procedures. Ms. Carnes and Richard Herring, General Manager, Gloucester Company, Inc., agreed that minimum standards regarding environmental issues need to be set for all industries, with incentives for the companies who go above and beyond that base-level standard. The witnesses also recommended that the standards and regulations become more consistent among agencies and levels of government and that the public become more aware of the strides that still need to be taken to achieve a truly environmentally friendly business community.

Senator Kerry concluded the hearing by suggesting that the EPA's statistical arm be removed from the agency and that the Census Bureau be required to provide the government's statistics on how the EPA is performing and how the environment itself is fairing.

FORUM—E-COMMERCE: BARRIERS AND OPPORTUNITIES FOR SMALL BUSINESS—WASHINGTON, DC, JUNE 15, 1999

On June 15, 1999, the Committee held a forum on the barriers and opportunities for small business in electronic commerce (“e-commerce”). The forum consisted of 5 panelists and 16 participants from various governmental and non-governmental segments of the computer and Internet fields. Chairman Bond opened the forum by reviewing the successes and downfalls of small business in e-commerce. He pointed out that according to a University of Texas report, e-commerce accounted for the creation of 1.2 million jobs and \$300 billion of revenue in 1998. Chairman Bond also noted that Congress is currently considering several issues that will have a direct effect on e-commerce including: Internet taxation, encryption, and electronic crimes.

The first panelist, John Alden, Senior Vice President of Sales, Primary Network, described the structure of the Internet and how small businesses can integrate into it. The Internet can be broken down into three parts: access, content, and e-mail. Of these three, he stressed that e-mail is the number one reason that people have Internet connections. It allows a person to communicate with anyone around the world that has an e-mail address. He stated that all three components are easy to obtain, usually at a low monthly fee. Mr. Alden also raised two concerns currently confronting small business. First, the need for a high-speed connection when a company has several workstations on a network. Second, he noted that suppliers are jumping past their usual small business vendor and going straight to the customer via the Internet. This practice is occurring in part because the bypassed small business vendor usually does not have the capital or technical staff to communicate with customers as efficiently as the large suppliers.

Keith A. Rhodes, Director, Office of Computer and Information Technology Assessment, GAO, was the next panelist, and he explained the issues that a small business owner must consider when deciding whether to become involved in e-commerce. First, the company must decide if its personnel has sufficient computer literacy and technical support for the company to engage in e-commerce. Second, the company must decide how it will present its business on the Internet—where will it advertise and how its web page will be designed in order to attract customers. Third, the company must understand that once it begins business via the Internet, the company will be open for business 7 days a week, 24 hours a day. As a result, the company will need the capacity to handle the success of increased business in a consistent and professional manner.

The third panelist, Ken Perez, Senior Vice President of Marketing, CyberCash, Inc. described several new innovations that have occurred with respect to e-commerce. He noted that the Internet industry has conceived some integrated solutions that allow customers to go to a single source for all necessary information to enable a company to engage in business online. Questions about Internet access, storage, catalog software, and credit-card processing can all be answered and obtained from a single source based on a monthly fee ranging from \$20 to \$300. These integrated solutions have lowered the cost for small businesses to enter the online industry thereby lowering the financial risk. Mr. Perez also pro-

vided statistics on the success of e-commerce for small businesses. At the end of 1999, there will be 1.1 million small businesses online and engaged in e-commerce. Seventy-one percent of small businesses with e-commerce sites indicate that the Internet is key to their success. Mr. Perez concluded his remarks by identifying some steps that need to be taken for small businesses to continue their success in e-commerce. For instance, much of the software currently available for developing e-commerce sites is designed for large corporations; small businesses need software specifically created to meet their needs. Also advertising needs to be more economical. Mr. Perez recommended that payment for advertisement should occur after a true sales lead has been generated, instead of before.

Harris Miller, President, Information Technology Association of America, and Eric Fredell, International Trade Specialist, DoC, both described how the Internet has led to an increase in trade between businesses that, without the Internet, would not be conducting business with each other. Both panelists noted the reduced cost and increased speed of responses to business proposals, which the Internet has facilitated. It was emphasized that the laws and regulations that the government might impose on the Internet pose a potentially significant challenge to e-commerce. Both panelists proposed that the government allow e-commerce to stay free and open.

The remaining time during the forum was dedicated to a discussion of the issues raised by the panelists with questions and comments from the other forum participants. A number of participants called attention to the enormous expansion in e-commerce, which has occurred due to a lack of regulations blocking or slowing it down. In particular, participants noted that there are currently no taxes or regulations to stifle investment in and the productivity of e-commerce. Several participants observed that there is a need for faster connectivity, but that this problem will be resolved in time. In general, all of the participants expressed the view that small businesses must become involved in e-commerce to compete in the 21st century.

ROUNDTABLE—SMALL BUSINESS INNOVATION RESEARCH (SBIR)
PROGRAM—WASHINGTON, DC, AUGUST 4, 1999

On August 4, 1999, the Committee held a roundtable on the geographic distribution of awards made under the Small Business Innovation Research (SBIR) program. The roundtable was attended by 33 participants, including representatives of small businesses active in the SBIR program and small business advocacy groups, officials of Federal agencies that have SBIR programs, and representatives of organizations assisting small businesses desiring to participate in the SBIR program. An additional nine participants joined the roundtable via teleconference from Columbia, Missouri.

The roundtable addressed the geographic distribution of SBIR awards and examined proposals to encourage greater participation by companies located in states that receive a disproportionately smaller share of SBIR awards. Chairman Bond noted that during Fiscal Years 1993 through 1996, companies in one-third of the states received 85 percent of the SBIR awards. Companies on the East and West Coasts received the vast majority of these awards,

while companies in the South, Midwest and Rocky Mountain states generally received very few awards. For example, the General Accounting Office (GAO) reported that in Fiscal Year 1997, companies in Massachusetts and California received 202 and 326 Phase II awards, respectively, out of approximately 1,400 awards nationally. Chairman Bond indicated that the best way to encourage small businesses to participate in the SBIR program in the under-represented states is to provide a comprehensive outreach and assistance program in such states.

The first topic of discussion during the roundtable centered on utilization of the Experimental Program to Stimulate Competitive Research (EPSCoR) to assist potential SBIR awardees. The EPSCoR program provides grants to universities to increase research and development activities in states historically receiving fewer research grants. Many agencies with SBIR budgets also have EPSCoR programs. Susan Kladiva, Director of Energy, Resources and Science Issues, Resources, Community and Economic Development Division, GAO, and Kesh Narayanan, Director, Industrial Innovation Programs, National Science Foundation (NSF), noted that unlike other agencies, the NSF has linked its EPSCoR program to its SBIR program. First, SBIR proposals from states with EPSCoR activities that are ranked in the "highly recommended" or "recommended" category in the review process, but were not selected because of funding restraints, receive a second review and an opportunity to be funded through EPSCoR. Second, NSF has used EPSCoR funds to provide grants to universities to afford technical assistance for businesses applying for SBIR awards (referred to as "Phase 0" funding). Other participants, including Carl Ray, SBIR/STTR Program Manager, National Aeronautics and Space Administration (NASA), acknowledged the usefulness of the NSF's efforts and discussed ways that agencies, such as NASA, could likewise coordinate their EPSCoR programs with their SBIR programs.

The second topic of discussion focused on how best to coordinate SBIR outreach with state-based organizations, including universities, state agencies and consortiums. Several participants, including Bruce Gjovig, Director, Center for Innovation, University of North Dakota, and Chris Busch, an SBIR Consultant, agreed that the most efficient and effective manner of encouraging participation in the SBIR program by small businesses in states not historically receiving a large number of awards is to use existing state infrastructure to provide assistance to interested and qualified small businesses.

The discussion then turned to the existing SBIR outreach program established by Congress in 1997. Under that outreach program, the SBA provides grants, on a competitive basis, to underperforming states. States provide matching funds and administer the outreach programs. Daniel Hill, Assistant Administrator, Office of Technology, SBA, noted that at the time of the roundtable, awards had yet to be provided to states under this program.

The final topic discussed was legislation introduced by Senator Carl Levin (D-MI) to establish a mentoring program whereby the SBA would provide grants of between \$50,000 and \$200,000 to associations representing small businesses. These associations would establish mentoring organizations that employ "volunteers" to provide technical assistance (including, marketing, proposal writing,

accounting, audit assistance, etc.) to small businesses seeking SBIR grants and located in low participation areas in states. Most participants agreed that mentoring is an important aspect to assisting small businesses in the SBIR program. However, many participants raised concerns about the legislation, including that (1) it attempts to create a program to provide technical assistance without leveraging existing resources (i.e., state universities and state or Federal agencies); (2) the grants are more likely to go to either national associations or to states that have enough success in the SBIR program that they have formed or have the ability to form an association of small businesses active in the SBIR program; and (3) the size of the grants may preclude a nationwide scope.

Chairman Bond closed the roundtable by announcing intentions to review the options for SBIR outreach and assistance as the Committee drafts legislation to reauthorize the SBIR program.

FIELD HEARING—ISSUES IMPORTANT TO WOMEN IN BUSINESSES—
TROY, MI, AUGUST 13, 1999

On August 13, 1999, the Committee held a field hearing to discuss issues of importance to women in small business. The field hearing was chaired by Senator Abraham Spencer (R-MI). In his opening statement, he noted that the hearing was designed to focus attention on both the successes and obstacles that women business owners have experienced. He also stressed the need to identify new ways that government can better assist women business owners.

The first panel of witnesses consisted of representatives from Women's Business Centers and provided the Committee with first-hand knowledge of the inner workings of these centers and how they might be improved. The witnesses described the business development programs available to women business owners, in particular, the Women's Initiative for Self-Employment (WISE) and the Center for Empowerment & Economic Development (CEED). The panelists also addressed the needs of women-owned businesses and emphasized the critical need for access to capital, both in terms of debt and equity resources. Carolyn Arnold, Owner, Under the Rainbow of Love Learning Center, described the many denials she received from banks when requesting a business loan, despite having proven not only that her business had been successful, but that it had obvious potential to expand. Ms. Arnold, turned to the CEED program where she did not encounter the same problems that she had with the banks.

The panelists noted that the lack of access to market opportunities from the private sector as well as the government decrease the potential revenue that women-owned companies can earn. In addition, the witnesses pointed out that the Federal government continues to fall short of its goal of directing 5% of primary Federal contracts to women-owned businesses.

The first panel also discussed other obstacles facing women-owned businesses seeking to compete in the private sector, including equality issues. Nikki Olyai, President and Chief Executive Officer, Innovision Technologies, testified about the barriers that women-owned businesses encounter when trying to bid on contracts or enforce contractual agreements. She stated that most large companies have completely disregarded her company's attempts to make a competitive bid, despite public indications that they were

seeking greater diversification. When dealing with contractual terms, Ms. Olyai testified that many corporations think they can take unfair advantage of women-owned businesses. She opined that when a woman business owner tries to get a company to respect the terms of a contract, the other party will often threaten to terminate the business relationship.

The second panel consisted of witnesses from the private sector representing women's business associations. The panelists discussed social security reform, increasing Federal procurement for women-owned businesses, reducing taxes, and easing government regulation. The witnesses agreed that the Social Security system needs to be reformed and that Congress should avoid using Social Security surpluses for other programs, thereby forcing taxes to remain at a high level. Pamela Boyd, Owner, Workforce, Inc., and National Public Policy Representative, Greater Detroit Chapter of the National Association of Women Business Owners, also advocated that workers should be permitted to invest a portion of their payroll taxes in individually directed personal retirement accounts.

With regard to tax issues, the panel focused primarily on the estate tax and strongly advocated its repeal. Jan Roncelli, President/Owner, Bermar Associates, Inc., noted that it is not fair for an individual and her company to pay income taxes throughout the life of the owner and then be taxed again upon the owner's death. Through a personal example involving her business, Ms. Roncelli, stressed that individuals affected by the estate tax have to invest too much time and money in estate planning to protect their businesses from being devastated by the tax. Finally, she argued that the amount of revenue that the estate tax produces is too low to justify the burdens of the tax.

Lastly, the panel addressed the need for reform of government regulations. Noreen Dyczkowski, President, Advanced Display & Exhibits, Inc., and Chairperson, Women's Business Forum of the Troy Chamber, stated that the biggest problem in this area is the large amount of complicated paperwork a business owner must fill out to take advantage of beneficial government programs. Senator Abraham mentioned that he had introduced a bill that would require that all Federal paperwork be available online in an effort to reduce some of these burdens, thus allowing people to fill out required paperwork online and to respond immediately to any resulting problems. Ms. Dyczkowski agreed that such a change would be beneficial.

JOINT FIELD ROUNDTABLE—BUILDING A STRONGER AGRICULTURAL COMMUNITY—KANSAS CITY, MO, AUGUST 24, 1999

On August 24, 1999, the Committees on Small Business of the Senate and House of Representatives held a joint roundtable in Kansas City, Missouri, to discuss tax, regulatory, and trade issues of concern to the agricultural community. Chairman Bond and House Small Business Committee Chairman Jim Talent (R-MO) presided over the roundtable and were joined by 24 participants representing various agricultural sectors as well as researchers, collectives, and advocates.

In their opening remarks, both Chairmen highlighted the current crisis in commodity prices and the need for steps to be taken in various areas to assist struggling farmers and ranchers. Chairman

Bond expressed his hope that the roundtable would help identify issues of primary concern to the agricultural community and possibly suggestions for improving the current situation facing agricultural businesses.

The first topic addressed by the roundtable concerned tax issues of importance to the agricultural community. The estate or "death" tax generated many comments about its impact on family farms and how much it can cost families both in terms of estate planning and in actual taxes. Tom Waters, Chairman, Missouri Levee and Water Drainage District Association, provided a descriptive account of the process he went through to file forms after his father passed away. Legal fees for handling the procedure amounted to \$93,000, excluding the amount of the tax. Participants also discussed the pending proposal in Congress to create accounts that would permit farmers and ranchers to even out the cycles of high and low revenues. These accounts, called Farm, Fish, and Ranch Risk Management (FFARRM) were included in the Taxpayer Refund and Relief Act of 1999, which President Clinton vetoed. The need for this type of account was bolstered by an extensive forecast presented by Abner Womack, Executive Director, Food Agriculture Policy Research Institute, who predicted that prices would not be turning up soon because of too much supply in most agricultural commodities. Participants also raised concerns about how capital gains taxes have hurt farmers who try to sell their land when they want to retire, and how the marriage penalty can hurt farmers when their spouses work off the farm.

The roundtable participants next turned to the regulatory burdens facing farmers and specifically whether they had participated in or benefitted from the procedures implemented by agencies under the Small Business Regulatory Enforcement Fairness Act (SBREFA). Under this law, OSHA and the EPA are required to convene panels of small businesses to review regulations before they are proposed and to conduct Regulatory Flexibility Analyses, which describe the impact of the regulations on small businesses. Other agencies are required to conduct just the Regulatory Flexibility Analyses. Both chairmen stressed the importance of monitoring agency compliance with this law, and Chairman Talent pointed out that agencies are now aware of their obligations, although they do not always fulfill them. The chairmen encouraged all participants to seek opportunities to be involved in the EPA and OSHA rulemakings that are covered by SBREFA and to challenge the agencies to make sure that they are complying with the law. Toward that end, Jim Guest, President, Missouri Pork Producers Association, indicated that he had been contacted by the EPA to be part of a panel on an upcoming clean-water rule dealing with animal waste.

Another regulatory area that received considerable attention by the participants was the Endangered Species Act and the Fish and Wildlife Service enforcement of the law. Richard Fordyce, a farmer and a Member of the Missouri Farm Bureau, described his experience at a hearing where he argued to keep the Topeka Shiner (a fish) off of the Endangered Species List (ESL). Mr. Fordyce and others instead wanted to make a voluntary effort at helping the Topeka Shiner survive. Unfortunately, representatives of the Fish and Wildlife Service were unable to answer questions about specific

actions that needed to be taken to protect the fish. In spite of efforts to the contrary, the agency added the Topeka Shriner to the ESL. Mr. Fordyce indicated that the agency had apparently made its decision well before the hearing and that the science used to support the decision was not current and did not reflect the need for balance in pursuing the objectives of the statute. Participants also raised concerns about the validity of science supporting regulations in conjunction with the EPA's recent decision to ban the use of certain pesticides under the Food Quality Protection Act.

The roundtable's final topic dealt with trade issues affecting farmers and ranchers. The participants generally agreed that the agricultural industry is being injured by the inability of the United States to have its agricultural commodities sold as widely as possible in many countries. Mr. Womack described how domestic prices of certain commodities (soybeans, corn, wheat, pork, etc.) would increase significantly if U.S. businesses could sell slightly larger amounts of these commodities abroad. Additionally, such exports would reduce current stockpiles, which are depressing commodity prices. The participants expressed general frustration about the United States' failure to pursue aggressively trade agreements that would foster greater exports of these goods. They also noted the prevalence of sanctions being imposed for diplomatic reasons, which seem only to hurt producers whose products cannot be sold in the sanctioned countries. To that end, the participants welcomed the recent addition to the United States Trade Representative's office of an agricultural specialist.

ROUNDTABLE—BUSINESS SUPPORTING EDUCATION—WASHINGTON, DC,
SEPTEMBER 9, 1999

On September 9, 1999, the Committee held a roundtable on opportunities for the business community to become involved in improving public education. The roundtable participants consisted of a variety of representatives from education and business associations. Chairman Bond opened the roundtable by noting that studies conducted by the National Federation of Independent Business (NFIB) and the U.S. Chamber of Commerce rate education as the most pressing public policy issue today. The Chairman explained that education is important to the small business community given the current difficulties small firms are having in terms of finding and retaining skilled employees. Chairman Bond noted that the purpose of the roundtable was to encourage a discussion on this issue and to showcase initiatives that are working at the State and local levels.

The roundtable's first topic of discussion focused on education activities at the state level. John Dornan, Executive Director, Public School Forum of North Carolina, provided examples of how school and business partnerships have resulted in successful improvements to the quality of education. He attributed that success to the commitment of national business organizations and the assistance of a great many small businesses. Other participants stressed that the business community's interest in higher standards, teacher quality and certification, and its commitment to the continued pursuit of educational reforms are instrumental to improving the quality of education. Roberts Jones, President, National Alliance of Business, and others noted that small businesses can improve local

education with little effort by requesting school transcripts before offering employment, as this sends a significant message about the importance of academic achievement to the students. Participants also stressed that businesses can assist educators by donating technology and by providing onsite training for teachers at local businesses so that they can better understand the business world. To explain why more businesses have not entered into partnerships with their local school systems, Ruby Bradley-Cain, President and Chief Executive Officer, RBC International, Inc., representing the National Association of Women Business Owners (NAWBO), and others questioned the level of paperwork and bureaucracy required for businesses to get involved. Other participants expressed concern that such partnerships were lacking in focus without guidance from the state.

The second topic of discussion centered on education activities at the local level. A number of participants emphasized that the needs of school systems had changed and that business involvement was critical to ensure that the quality of education was reflective of the needs of the business community. In addition, it was noted that the debate was not just about providing qualified employees for the business community, but about providing students with the skills necessary for the world that they are entering. Bret Lovejoy, Executive Director, American Vocational Association, described the extensive partnerships that his association had created with the auto industry and the hospitality industry through funding, vocational training and mentoring. He noted that the association's members benefitted from this program by attracting employees that might otherwise not consider employment in these industries. Daniel Merenda, President and Chief Executive Officer, National Association of Partners in Education, and many other participants emphasized the need for local leadership to coordinate and encourage businesses to get involved and to provide businesses with a plan that allows them to help local school systems effectively.

HEARING—SLOTting: FAIR FOR SMALL BUSINESS & CONSUMERS?—
WASHINGTON, DC, SEPTEMBER 14, 1999

On September 14, 1999, the Committee held a hearing to examine the effect on small businesses and consumers of "slotting" allowances in the retail grocery industry. Slotting allowances are fees charged to manufacturers for the placement of products on retailers' shelves. In his opening statement, Chairman Bond noted that "slotting allowances have generated a considerable amount of suspicion." Because of these fees small business products are often excluded from the marketplace simply because the small business cannot afford the heavy payments sought by retailers. Chairman Bond noted that "it almost seems to be a practice cloaked in secrecy," making it difficult for Committee staff to even get information on this issue. He stressed that all of the small businesses interviewed by Committee staff reported considerable fear of retaliation from dominant competitors and retailers for speaking out, with some providing first-hand experiences of such retaliation. Senator Kerry echoed the Chairman's concerns and emphasized his desire to see fair competition in the marketplace.

The three small business witnesses on the first panel provided first-hand experiences concerning slotting fees. Two of the small

businesses testified anonymously from behind a screen and with a voice scrambler because of the fear that testifying would prompt retaliation. Witness B described experiences with a dominant competitor, which effectively controls the retailers' shelves, and is focused on gaining a greater market share. As a result of its control over shelf space, the dominant manufacturer can drive down competitors' sales and essentially eliminate the competition, which in many cases are small businesses. Witness B's business is in jeopardy, not because it has an inferior product, and not because there is a lack of consumer demand, but because dominant manufacturers are literally buying the market. Witness A testified about the impact that dominant manufacturers have in terms of their market power. Given the demand for higher profits, retailers are excluding small businesses at a greater rate than ever before. Witness A also expressed concern that even after paying the fee, a manufacturer's product could be taken off the shelf within a short period of time. Witness A concluded by saying that with the virtually unlimited resources of large conglomerates, small business and ultimately the consumer pay the price for this concentration of retail power.

The third small business witness, Scott Garfield, Vice President, Lee's Ice Cream, Baltimore, Maryland, described his attempt to get local grocery stores interested in his highly acclaimed ice cream products. He discovered that even though his company made a great product that was well known in the area, the grocery stores were only interested in how much money he would pay them to stock the ice cream in their stores. Mr. Garfield testified that based on his experience and the money he lost trying to break into the market, the grocery business is currently no place for a small manufacturer. He concluded his testimony by stressing that the consumer is harmed by a limitation of choice and like Witness A, asserted that the extra cost that a manufacturer pays in slotting allowances is ultimately passed on to the consumer.

The second panel focused on industry-wide issues relating to slotting fees. Gregory Gundlach, Associate Professor, College of Business Administration, University of Notre Dame, described his extensive studies on slotting allowances and outlined the wide variety of payments that retailers demand from manufacturers. He estimated that slotting allowances amount to \$9 billion a year or approximately 16% of all new-product introduction costs. Mr. Gundlach noted that while slotting allowances provide some distribution efficiencies, the result is higher consumer prices, less consumer information, and fewer consumer choices. Unfortunately, small manufacturers often end up paying a disproportionate amount of slotting fees in comparison to dominant manufacturers. He noted that the practice is becoming more commonplace and that slotting fees are being charged for established products, as well as new, and at every stage of a product's retail life. In addition, slotting fee practices are becoming prevalent in other retail environments.

Robert Skitol, an antitrust attorney appearing on behalf of the American Antitrust Institute, outlined the various applicable antitrust statutes and their history. He expressed particular concern about exclusive contracts that effectively shut out all competition, and in turn, lead to higher concentration, diminished competition, higher food prices, less innovation, and less choice to consumers.

Kenneth Partch, Editor-at-Large, *Supermarket Business* magazine, testified that the majority of companies in the grocery industry ignore the relevant antitrust laws. According to studies conducted by *Supermarket Business*, the fees charged can be as much as \$10,000 or more per item. In addition, Mr. Partch observed that the grocery industry itself is divided as to the rationale for charging the fees, although he suspected that the real reason for their existence is the retailers' desire to get a greater share of consumer dollars. Mr. Skitol called for the Federal Trade Commission (FTC) to take proactive steps to conduct an extensive, industry-wide investigation, and upon its completion, draft new enforcement guidelines with respect to slotting fees. While such a study would take time, he stressed that the FTC could use its merger-enforcement authority to expand the focus of merger approvals to include buying-power issues.

The third panel was comprised of association representatives, some of whose members charge slotting allowances. John Motley, Senior Vice President, Food Marketing Institute (FMI), outlined the principal reasons why FMI's members charge slotting allowances. He stressed that roughly 20,000 new products are introduced each year and suggested that slotting fees enable a retailer to weed out the good from the bad. He also pointed out that many of these new products fail to sell. As a result, the slotting fee is merely an insurance against failed products and an assurance to the retailer that the manufacturer is committed enough to share the risk of a failure. Mr. Motley cautioned that if slotting allowances were made illegal, small business would be at a greater disadvantage in trying to get their products on the shelf. Jeffery Schmidt, an antitrust attorney appearing on behalf of the Grocery Manufacturers of America (GMA), noted that GMA does not have an opinion as to the validity of the arguments for or against slotting fees. Mr. Schmidt noted that research GMA has conducted indicates that the number of new products introduced each year is much closer to 1,100 rather than the 20,000 that is more commonly quoted. He concluded by testifying that GMA does not believe that additional governmental intervention in this area is necessary.

Chairman Bond concluded the hearing by pointing out that the FTC had done little work on slotting fees and that based on the testimony of the witnesses, he would request that the agency focus greater attention on this issue. He also said that he would request the General Accounting Office (GAO) and others to conduct a thorough investigation into the use of slotting fees as outlined by the witnesses.

ROUNDTABLE—NATIONAL CONFERENCE ON SMALL BUSINESS ACT—
WASHINGTON, DC, OCTOBER 19, 1999

On October 19, 1999, the Committee held a roundtable to review the National Conference on Small Business Act (S. 1111), a bill introduced by Chairman Bond in May 1999. The Chairman opened the roundtable by highlighting the important role that small businesses play in the U.S. economy, both in rural towns and inner cities. The bill would require that the Federal government sponsor a national conference every four years to highlight the successes of small businesses and to focus national attention on the problems that may be hindering the ability of small businesses to start up

and grow. The Chairman stressed that it is important to build on the past successes of the three White House Conferences on Small Business. Senator Kerry emphasized the importance of bringing a group of small business advocates together through the roundtable to discuss ideas for creating a regular national small business conference.

The roundtable began with some participants giving their views on the need for a national conference focusing on small business issues. Mark Schultz, President and CEO, Research Institute for Small and Emerging Businesses, discussed his role as Executive Director of the 1995 White House Conference on Small Business. Mr. Schultz noted that his directive was to provide the small business community with an independent, bipartisan, and open forum. He pointed out that four years after the 1995 conference, 90% of the recommendations adopted by the small business delegates have been implemented in whole or in part. He also commented about the successes and obstacles facing the conference organizers. Mr. Schultz suggested that the title, "White House Conference on Small Business," was an obstacle, since it implied that the forum would be political, and he believed a more generic, nonpartisan name would be best.

Terry Neese, speaking on behalf of the NAWBO, emphasized her support for having the conference every four years and expressed her belief that future conferences should be de-politicized, with the Executive Branch playing a lesser role than in previous conferences. Eric Blackledge, President, Blackledge Furniture, and an active former White House Conference delegate, stressed the importance of electing delegates from their individual states rather than relying on political appointment of delegates. Larry Mocha, President, Air Power Systems Company, Inc., discussed his role as the Chairman of the Governor's Oklahoma Conference on Small Business, following his service as a delegate to the 1995 conference. He underscored the importance of organizing small business owners at the state level, so that the state conference would provide meaningful ideas for the next conference on small business.

As a group, the roundtable participants agreed that an independent commission is an appropriate organization for overseeing the National Conference on Small Business. Further discussion centered on the importance of electing small business delegates. The participants agreed that the majority of delegates should be elected. The participants also agreed that the more small business owners involved in the process, the better the results. In addition, there was a consensus that alternate delegates served a useful role in the 1995 conference and that there should be a provision in the law to allow for some alternate or substitute delegates from each state. Ms. Neese expressed concern that some employers transported employees to the state conventions in 1995 to vote in favor of their employers' election as delegates to the 1995 conference. Mr. Schultz stated that this problem had not been anticipated; consequently, rules need to be established to ensure that people who were voting were participating in a substantive manner. Mr. Schultz urged that limits be imposed on voting participation at the state conferences restricting it to owners and officers of small businesses.

The roundtable included some discussion about how frequently a national conference on small business should be held. Mr. Blackledge stressed the importance of holding a conference every four years. Judy Obermayer, President, Adhesive Mart, Inc., expressed reservations about allowing sufficient time for the state conferences to be effective. Mr. Schultz suggested that the four-year cycle leading up to a national conference begin at the same time the previous conference concludes. This would allow sufficient time to prepare for the succeeding conference.

Participants were concerned that holding both state and regional conferences would be too great an undertaking to coordinate, and recommendations were made to eliminate all regional conferences or to hold only regional conferences in lieu of state conferences. Mr. Schultz pointed out that he had a staff of 30 people who coordinated and planned the conferences. There was a consensus among participants that one or more independent, nonpartisan businesses would be better suited to conduct the state and national conferences rather than relying on the national conference staff.

A lively conversation occurred among participants about issue development for the state and national conferences. Giovanni Coratolo, Director, Small Business Policy, U.S. Chamber of Commerce, raised concerns about Federal agencies being responsible for issue development when it is often the case that the same Federal agencies are the ones causing problems for small businesses. He emphasized that the focus of the national conference should not be too heavily weighted toward legislative ideas and that greater attention be given to resolution of regulatory problems. In addition, Ms. Obermayer recommended that future national conferences focus not just on what is wrong, but also on the small business impact of what is likely to happen in the future.

The roundtable concluded with a discussion about whether conference delegates should set the top issues identified by the national conference in a priority order. Although the delegates to the 1995 White House Conference were not supposed to rank key issues, they ended up doing so by publishing the votes on the top 60 issues. It was agreed that future national conferences should continue to rank the top issues in priority order. In addition, Edith Quick, Principal, Quick Tax & Accounting Service, stressed the importance of follow up by the delegates on key issues after the conclusion of the conference. As a tax chair from the 1995 conference, she reported that the tax chairs continue to hold periodic conference calls to share ideas on the promotion of issues raised at the last conference. Chairman Bond brought the roundtable to a close after stressing the important role played by delegates during the post-conference follow-up period, when they bring key issues and solutions directly to the attention of their U.S. Representatives and Senators.

HEARING—INTERNET CRAMMING: THE LATEST HIGH-TECH FRAUD ON
SMALL BUSINESSES—WASHINGTON, DC, OCTOBER 25, 1999

On October 25, 1999, the Committee held a hearing to examine the practice of Internet cramming. In his opening statement, Chairman Bond explained that “cramming,” generically, involves the placement of unauthorized, misleading, or deceptive charges for services or products unrelated to a consumer’s telephone service on

the consumer's telephone bill. "Internet cramming," specifically, enables web site design and hosting companies to place a charge for a "free" web site on the phone bill of a small business, church, or non-profit organization without proper authorization. The Chairman noted that prior to the hearing, Committee staff spoke to approximately 100 small businesses victimized by Internet cramming and found that only one business was even aware that it had a "free" web site and that the company was being charged for it on its telephone bill. The hearing exposed Internet cramming as a carefully constructed, multi-million dollar scam targeting approximately a million small businesses nationwide.

On the first of four panels, Stanley Czerwinski, Associate Director, and John Finedore, Assistant Director, Housing and Community Development Issues, Resources, Community and Economic Development Division, GAO, provided the Committee with background on cramming and its latest use via the Internet. They testified that cramming was the second most common cause of written consumer complaints received by the FTC and the fourth most common complaint at the Federal Communications Commission (FCC)—an increase of 3000% in two years. In addition, they revealed that although there was a slight downward trend in the number of complaints received at the Federal level, their ongoing research indicated that state-level complaints were still increasing in a majority of states.

Three victims of Internet cramming made up the second panel and testified about their personal experiences with this issue. Peter Franchino, Co-Owner, Elam Biggs Bed & Breakfast, Grass Valley, California, described how he and four other local bed-and-breakfast proprietors had become victims of cramming. He explained that he agreed to receive information regarding a "free" web site but never received any information. Nevertheless, charges were placed on his phone bill, and he spent months attempting to have them removed. David Pickering, a member of the First Baptist Church of Mexico, Missouri, testified that his church was entirely unaware that it was the victim of cramming until contacted by the Committee on Small Business. He stated that Committee staff contacted the church after identifying the church on a suspected Internet crammer's web site. Mr. Pickering said that his church unknowingly paid for the "free" website for approximately nine months. The third witness, Susan Toney, Office Manager, Creative Car Works, testified that she received and reviewed a "free" web site package; however, she immediately canceled the service because the web site developed was unsatisfactory. Ms. Toney noted that despite promptly canceling the web site service, she was charged for two months, which took nine months to have the charges reversed.

The third panel, comprised of former telemarketing employee, a police officer and the manager of a telemarketing operation, testified about how Internet crammers operate. The former telemarketing employee, Kelly Cramer, a college student in Eau Claire, Wisconsin, testified about her experience working, while in a high school work-study program, for a company accused of Internet cramming. Ms. Cramer revealed that she quit her job because she was uncomfortable engaging in what she felt were unfair and fraudulent practices. Ms. Cramer's father, David Cramer, Police Officer, Eau Claire, Wisconsin, testified that he conducted an inves-

tigation when his daughter informed him of the telemarketer's tactics and found that Ms. Cramer's boss had a lengthy criminal history. Joel Bittner, Operations Manager, North County Distributions, testified about telemarketing tactics used by Internet-cramming companies and provided an insider's view into the cramming scam.

On the final panel, Jodie Bernstein, Director, Bureau of Consumer Protection, FTC, testified about enforcement actions and new regulations against Internet cramming. In addition, she announced a new settlement with U.S. Republic Communications, Inc., a company accused of Internet cramming. Under the settlement, U.S. Republic Communications, Inc. is to maintain a \$1.8 million letter of credit payable to the FTC, which will be used to provide refunds to an estimated 124,000 small businesses involved in their alleged cramming activities.

At the close of the hearing, Chairman Bond announced a list of tips for small businesses to heed in order to avoid becoming a victim of cramming. He also stated his commitment to continue working closely with the FTC, FCC, and the Department of Justice (DoJ). The Chairman stated that he would closely review legislative options to stop unauthorized charges and require better disclosure of charges on telephone bills.

ROUNDTABLE—ENSURING THE MAXIMUM PRACTICABLE
OPPORTUNITY—WASHINGTON, DC, NOVEMBER 9, 1999

On November 9, 1999, the Committee held a roundtable to consider issues affecting small business procurement policy and programs. The participants included Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU), or their representatives, from 30 Federal agencies. The roundtable also considered the problem of contract bundling, the potential of subcontracting opportunities, the ability of contracting officers to manage the various programs, and the need to address specific implementation issues affecting the HUBZone and Small Disadvantaged Business (SDB) programs.

In his opening remarks, Chairman Bond noted that OSDBUs have special expertise in carrying out the procurement programs aimed at small business. He emphasized that the OSDBUs' experiences would be a vital resource that the Committee would draw upon in its efforts in 2000 to reauthorize the programs administered by the SBA. Moreover, he noted that the OSDBUs will be taking on new responsibilities under the contract-bundling provisions adopted in the 1997 reauthorization legislation, helping to ensure that bundling occurs only when "necessary and justified" under the terms of the Small Business Act.

Durie White, Chair, OSDBU Interagency Council, and Director, OSDBU, Department of State (State), opened the discussion by describing the role of an OSDBU in negotiating with the SBA to establish goals for small business participation in contracts awarded by an OSDBU's parent agency. In addition, OSDBUs provide assistance to individual small businesses on specific problems with the agency, such as getting payment, providing contacts within the agency, and enhancing e-commerce opportunities. Other participants noted that their roles varied somewhat depending on whether their agency was centralized or decentralized. Ralph Thomas,

Associate Administrator, OSDDBU, NASA, said his agency tended to rely more heavily on Small Business Specialists located at NASA's 10 centers throughout the Nation.

The participants provided mixed views on their agencies' experiences with contract bundling and the use of subcontracting to ensure continued small business participation. Ernest Woodson, Senior Procurement Analyst, Office of Enterprise Development, GSA, mentioned that subcontracting, as a tool to offset bundling, raises enforcement issues. Small business subcontractors complain that, even when included in subcontract plans submitted by successful large business prime contractors, they do not always receive actual work during the performance of the contracts. Mr. Thomas indicated that his agency has addressed this problem in cost-plus contracts by withholding 15% of the award fees. Mr. Thomas and Robert Neal, Director, OSDDBU, DoD, both noted that a prime contractor's failure to subcontract in accordance with plans can be held against that prime contractor in evaluating its past performance during consideration for future procurement opportunities. Mr. Neal also noted that Defense Department subcontracting dollars to small business have remained steady, not increasing to offset prime contracting dollars lost due to bundling. Tim Foreman, Deputy Director, OSDDBU, DoD, said the Department was preparing a study to ascertain the effects contract bundling have on small business more definitively.

Scott Denniston, Director, OSDDBU, Department of Veterans Affairs (VA), suggested that establishing a statutory Government-wide subcontracting goal might give the agencies additional leverage in negotiating subcontracting plans with prime contractors. It could provide a benchmark for evaluating a prime contractor's particular goals in its subcontracting plan. Mr. Foreman expressed concern that current law already provides too many goals for contracting officers to monitor effectively, and for this reason a subcontracting goal would compound that problem. Mr. Thomas stressed that a statutory subcontracting goal could also provide an excuse for a prime contractor to reduce its subcontracting efforts, thereby making the goal a ceiling rather than a floor.

Turning to the HUBZone program, the roundtable participants raised concerns about several implementation issues. Mr. Neal noted that the requirement that a qualified firm must have its principal office located in a HUBZone seems to be unnecessarily restrictive and limits contracting opportunities that otherwise would be available to participating firms. Instead, he emphasized the need for HUBZone residents to be employed by firms working on Federal contracts awarded through the program, shifting the focus to whether job opportunities are directed to the people who need them rather than on whether a firm's office is located in a HUBZone. Jeanette Brown, Director, OSDDBU, EPA, echoed this concern with respect to contracts to clean up Superfund sites.

The OSDDBU directors were generally not as concerned about the requirement that a HUBZone firm hire 35% of its workforce from HUBZone residents. Sarah Summerville, Director, OSDDBU, Department of Energy (DoE), pointed out that relaxing that provision would reduce the HUBZone program's effectiveness in creating job opportunities in HUBZone areas. She noted that information technology (IT) firms hire more than just IT specialists, such as admin-

istrative staff, so a scarcity of trained IT professionals in HUBZone areas should not automatically preclude participation by IT firms. Mr. Denniston remarked that one IT firm in Fairfax County, Virginia, had been able to meet the 35% threshold, by hiring and busing employees to their offices from the District of Columbia. Lloyd Alderman, Director, OSDBU, Defense Logistics Agency, suggested that the SBA consider regulations to check compliance with the 35% threshold based on employment levels over a period of time, rather than as of a particular date, which would allow for fluctuations as a company hires new employees to perform a contract.

The roundtable also focused on the Small Disadvantaged Business (SDB) program. Some participants suggested that firms were not applying for certification because its benefits did not seem to justify the effort and cost. Tracey Pinson, Director, SADB, Department of the Army, noted that the benefits tend to accrue to large prime contractors, who get credit for meeting SDB goals if they subcontract to certified SDB firms, and who therefore have reason to encourage their SDB subcontractors to apply. Thelma Toler, Small Business Specialist, OSDBU, Executive Office of the President, commented that she regularly receives complaints from potential participants about the certification costs and the time consumed by the necessary paperwork. Mr. Thomas suggested that certification applications would increase once firms begin to lose contracting opportunities for failure to be certified.

The roundtable concluded with Chairman Bond thanking the OSDBU directors for sharing their insights and experiences, which will be helpful to the Committee in developing its reauthorization agenda.

FORUM—THE FUTURE OF SMALL BUSINESS EXPORTING—WASHINGTON, DC, DECEMBER 14, 1999

On December 14, 1999, the Committee held a forum to provide an overview of the barriers small businesses face when exporting and potential Federal solutions. The forum also focused on two specific issues that small business exporters have identified as primary concerns—financing and e-commerce. Five panelists made presentations to the Committee. In addition, the forum was attended by 17 participants, including representatives of small businesses active in exporting and officials from Federal agencies that promote and assist small business exporting.

Chairman Bond stressed the importance of international trade for small businesses and the positive effects that increasing such trade will have on the nation's economy. Small businesses account for more than 50% of the gross domestic product, and since 1992 they have provided most of the approximately 20 million net new jobs added to the economy. Chairman Bond pointed out that while the number of small businesses exporting has increased in recent years, that number is still relatively low. He also stressed that the failed round of trade negotiations in Seattle demonstrates that it is imperative that associations and businesses educate their members, employees, and customers about the importance of international trade to the country's economic prosperity.

The first panelist was Edmund Rice, President, Coalition for Employment Through Exports, who described the barriers that exist that preclude small businesses from exporting and the obstacles

current small exporters encounter as they try to create a market for their goods internationally. Mr. Rice spoke specifically about the need for increased coordination of the trade promotion programs that exist in seven cabinet departments and eight independent agencies. Kirk Robertson, Executive Vice President, Overseas Private Investment Corporation (OPIC), spoke about OPIC's vision for expanding overseas opportunities for U.S. small businesses and the work ongoing at OPIC to achieve that objective, including the programs OPIC has available to assist small businesses with exporting.

John Mueller, Chairman, G&W Electric Company, appearing on behalf of the National Electrical Manufacturers Association, addressed the problems small businesses have selling products to foreign governments and stressed the need for more open and transparent procurement by other countries. He also emphasized the need for development of voluntary standards within industries to facilitate international trade.

Gerald Smith, President, Transcon Trading Company, and member of the Advisory Board for the Export-Import Bank of the United States, discussed the financing needs of small exporters and the extent to which the current government financing programs address those needs. Mr. Smith stated that the primary reason that small businesses are unable to access government export financing programs is that private banks are not generally interested in the smaller transactions that small businesses typically conduct. Larger banks have little economic incentive to participate in small business export loans, while smaller community banks generally do not have the export trade financing knowledge to make them comfortable with such lending.

The final panelist, Harris Miller, President, Information Technology Association of America and President of the World Information Technology and Services Alliance, addressed the legal and societal obstacles to increasing exporting opportunities through e-commerce and options for overcoming those obstacles. Mr. Miller stressed the need for a single government Internet portal to provide information to small businesses on exporting.

Following the presentations, the panelists and participants addressed how the Federal government could increase small business exporting opportunities for small businesses. The discussion focused primarily on two issues: (1) the need for financing and (2) increased coordination and promotion of export programs at the various Federal agencies. The participants and panelists agreed that the Federal agencies offering financing programs should make a concerted effort to increase participation in and small business access to government export financing programs. This would include reaching out to non-bank lenders and to small community banks and providing them with training on export finance issues. Additionally, the participants and panelists agreed that greater coordination by Federal agencies and better promotion of the information and programs available to small business owners will have a positive impact on the number of small businesses taking advantage of export opportunities.

Chairman Bond closed the forum by announcing that the Committee will closely review the legislative options raised by the par-

ticipants and panelists to ensure that the Federal government is providing effective exporting assistance to small businesses.

HEARING—THE PRESIDENT’S FISCAL YEAR 2001 BUDGET REQUEST FOR THE SMALL BUSINESS ADMINISTRATION—WASHINGTON, DC, FEBRUARY 24, 2000

On February 24, 2000, the Committee held a hearing on the President’s Fiscal Year 2001 budget request for the SBA. Chairman Bond opened the hearing with a recitation of the successful role played by small businesses in the U.S. economy, and the record of successes that the SBA has achieved, in large part due to its credit and management assistance programs. He noted that during the past decade, there has been enormous growth in the SBA’s 7(a), 504, Microloan and SBIC programs, with tens of billions of SBA-guaranteed dollars having been loaned or invested in small businesses. The SBDC program and SCORE programs have allowed the SBA to deliver management assistance and counseling to millions of small business owners and budding entrepreneurs.

Chairman Bond also noted that the Administration’s budget request proposed ambitious plans for various new initiatives, such as the New Markets Program, which includes the HUBZone program, authored by Chairman Bond in 1997. He noted that \$5 million in the Fiscal Year 2001 budget request is earmarked for the HUBZone Program, which the SBA has been very slow to implement. He recommended that the 1,000 centers and sub-centers under the SBDC program start distributing information to small business owners about the HUBZone program.

Chairman Bond also expressed some concerns about the New Markets Venture Capital (NMVC) program and took issue with the SBA’s contention that the regular SBIC program was not helping local economies, such as San Jose, California. He pointed out that over the past three years, SBICs had made 98 investments totaling \$67 million in 37 small businesses within the San Jose city limits. These investments are creating new jobs helping to fuel the local economy.

Concerns were also raised about why the SBA’s budget request called for the creation of new programs when the agency was having great difficulty managing its core small business programs. Although the SBA has received budget increases in recent years, its offices supporting key technological SBA programs are underfunded or understaffed according to reports received by the Committee. Chairman Bond cited four key areas where the SBA is failing to meet its mission requirements: (1) the GAO issued a report critical of the SBIR program; (2) the SBA Inspector General prepared an audit critical of the 7(a) guaranteed business loan program; (3) the Farm Credit Administration (FCA) issued a report critical of the SBA’s management of the Small Business Lending Company (SBLC) program; and (4) the independent auditor of the SBA’s Fiscal Year 1998 financial statements cited three material weaknesses calling into question the agency’s internal controls designed to reduce the risks in its operations.

Additional evidence of the agency’s difficulties was found in the problems it continues to encounter in developing the Loan Monitoring System, a computer system to monitor the SBA’s credit programs and the participating lenders. Although Congress had appro-

priated \$24 million over the past three years, the SBA had not been able to complete planning for its first iteration. The agency, however, is anxious to spend money to implement the new system in spite of the planning delays. Chairman Bond included a status report from the GAO describing the delays in completing the initial planning phase of the computer system.

Senator Kerry, commended SBA Administrator Aida Alvarez for submitting a sound budget request. He pointed out that he supports the NMVC program and the funds requested for the program. Senator Kerry cited his bill, the Community Development and Venture Capital Act, as a way to spur investments in inner cities and low- and moderate-income areas in rural counties. Senator Wellstone made a statement emphasizing his support for the Community Development Venture Capital Demonstration Program, which has been included in Senator Kerry's bill.

SBA Administrator Alvarez testified on behalf of the Administration. She devoted much of her oral testimony in support of the NMVC program and the funding needed to implement the program should it be authorized. During questioning after her prepared testimony, Chairman Bond announced that he and Senator Kerry would request that the GAO undertake a review of economic stimulus programs that are complementary to or overlap with the NMVC proposal. Ms. Alvarez also reviewed some of the success stories at the SBA, reciting statistics about the SBIC and 7(a) programs, and she discussed the new budget initiative to provide \$15 million in grants for Phase III commercialization efforts by SBIR program participants.

In reviewing the Agency's efforts to make itself more technologically relevant, the Administrator stated that 69% of the loan transactions will be processed electronically by Summer 2000, representing 79% of the loan dollars guaranteed by the SBA. Ms. Alvarez pointed out how this change would create enormous efficiencies at the Agency; however, in the follow-up questions, Ms. Alvarez admitted that this change would occur in theory only. The actual number of transactions made electronically would be lower, and lenders would be free to continue to use alternate means to transmit this data to the SBA, such as fax machines and the U.S. Postal Service.

Chairman Bond questioned the Administrator about the lack of progress to implement the Loan Monitoring System (LMS). Ms. Alvarez called on Kris Marcy, SBA's Chief Operating Officer, to help her respond to Chairman Bond's questions. Ms. Marcy explained that the LMS is a work in progress, thus acknowledging that there is much work to complete. She explained that the SBA has received \$16 million from Congress, of which \$7 million has been spent. Nine million dollars is "sitting" in an organization called FEDSIM at the GSA, and it can be spent as needed on system development. An additional \$8 million has been appropriated but not released by the Senate and House Appropriations Committees.

Chairman Bond questioned Ms. Alvarez about the staffing levels in the Office of Advocacy to which she deferred to Russ Orban, SBA's Assistant Chief Counsel for Advocacy. Mr. Orban explained there are 47 employees in the Office of Advocacy, a decrease from 62 positions in 1993. Ms. Alvarez went on to explain that the Agen-

cy would be reducing Fiscal Year 2001 staffing about 5% from Fiscal Year 2000, which includes adding 86 new employees at SBA.

FORUM—CYBERCRIME: CAN A SMALL BUSINESS PROTECT ITSELF?—
WASHINGTON, DC, MARCH 9, 2000

On March 9, 2000, the Committee held a forum on cybercrime and its effect on small business. The forum followed up on the Committee's June 15, 1999, forum on e-commerce, which outlined many of the advantages and dangers of conducting business in the new electronic economy. Chairman Bond opened the cybercrime forum by reviewing the benefits of the new economy and contrasting them with the increasing number of computer crimes and their impact on small businesses. He also noted that the purpose of the forum was to increase awareness of and encourage discussion about these issues among small businesses.

The forum consisted of a panel of four experts on cybercrime as well as representatives from a variety of business associations and government agencies. The first panelist was Joan Neptune, General Manager, LC Communication, who described her experience of having hackers attack her company and attempt to extort \$30,000. Her report of the incident to the United States Secret Service resulted in an investigation that tracked the hackers to Germany, where they were apprehended. While the hackers received a relatively light sentence in the German courts, the resulting impact on Ms. Neptune's company was devastating. Damage caused by the hackers, curtailed services, and reduced consumer confidence caused the ultimate destruction of the business.

The second panelist was Mary Riley, Special Agent, Assistant to the Special Agent in Charge, United States Secret Service. Agent Riley testified about the difficulties involved with cybercrime investigations, the need to collect information from many jurisdictions, the problems involved in locating hackers in foreign countries, local laws, the need for greater technical knowledge of the investigators, and the potential for harm to the victim due to reduced consumer confidence.

The third panelist, Scott Charney, Partner, PricewaterhouseCoopers LLP, testified that the size of the problem is vastly understated as many incidents are never reported to law enforcement. He outlined many alternatives available for a business to protect itself. He cautioned, however, that these systems are expensive, and it is often difficult to obtain experienced staff. The final panelist was Mr. Roger Farnsworth, Manager of Product Marketing, Cisco Systems Inc. Mr. Farnsworth described the technology that is available for a small business to protect itself against cybercrime incidents. He also testified that small businesses should treat electronic crime as it would any other type of criminal threat and that small businesses can and should take steps to protect itself.

The first topic of discussion was penalties for electronic crimes. Mr. Charney outlined the various laws and the associated mandatory sentences within the United States but noted that international cases are much harder to prosecute. Of greater concern is the perception that the detection rate is very low and thus many hackers feel that they are unlikely to get caught. As a follow up, Agent Riley outlined the efforts by Federal law enforcement offi-

cials to create links with other law enforcement organizations, both domestically and internationally, to improve the coordination of cybercrime investigations. In response to a question about where a small business person should go to report a cybercrime, Agent Riley said that there are many different law enforcement agencies, including local, state, and Federal, that could potentially investigate an electronic crime. She noted that the Federal government does not have the resources to investigate every cybercrime and that they frequently refer the case to other agencies for investigation.

Mr. Farnsworth and Mr. Charney cautioned that despite the problems with these types of crimes, small businesses or consumers should not be deterred from using the Internet to conduct business. This was particularly important given that the industry is working toward a more secure Internet and that law enforcement has been much more responsive to these types of crimes.

Participants and panelists agreed that the lack of experienced employees represented a major problem to all types of businesses. Many initiatives were discussed including H1-B visas and other technical training programs. Ms. Neptune pointed out, however, that in this difficult labor market such skills are in high demand, and there is a significant problem of losing experienced people.

Chairman Bond concluded the roundtable by announcing that he would be writing to U.S. Attorney General Janet Reno to request that the DoJ provide a single point of contact for the reporting of computer crimes. He also announced that he would be writing to FBI Director Louis Freeh to request that the National Infrastructure Protection Center undertake outreach initiatives to small business associations in order to improve awareness of computer-security issues.

HEARING—SWINDLING SMALL BUSINESSES: TONER-PHONER SCHEMES
AND OTHER OFFICE SUPPLY SCAMS—WASHINGTON, DC, MARCH 28, 2000

On March 28, 2000, the Committee held a hearing to examine the fraudulent telemarketing of office supplies to small businesses, particularly printer and copier toner. The hearing exposed office supply scams as an extraordinarily widespread problem. The Committee found that the fraudulent sale of toner alone costs businesses and non-profit organizations one quarter of a billion dollars each year. The Committee also found that the perpetrators of this fraud can be very prolific. A single medium-sized telemarketer investigated by the FTC defrauded, on average, a small business every 90 minutes of every day for four years.

In his opening statement, Chairman Bond explained that while these scam artists employ many tactics to persuade organizations to purchase their products, typically they will represent that they are associated with the firm's regular supplier of photocopier toner and falsely claim that prices are about to increase. A fraudulent telemarketer, however, will generally avoid quoting a specific price and quantity over the phone because the prices they charge for supplies are substantially higher than prices available from reputable suppliers—up to ten times higher.

The Committee also found that these telemarketers will also use deceptive means to collect payments. For example, invoices may not arrive until a week or two after the merchandise so that the

inflated price is not as obvious and there is a reasonable chance that the supplies have already been used. The scam artists also spend significant energy on collection efforts, and if they find an organization that is willing to pay for their products, they will typically “reload” and send unordered merchandise and invoices for as long as the organization continues to pay.

The hearing consisted of four panels. The first panel included representatives from two small businesses and a St. Louis, Missouri, charity who testified about their personal experiences as targets of fraudulent telemarketers selling toner cartridges. Joan Bailey, Administrative Assistant, Brownstone Real Estate Company, testified that she was contacted by a telemarketer who misrepresented that the telemarketer was the realty company’s normal supplier of copier toner. The telemarketer also stated that toner prices were increasing. The telemarketer pointed out, however, that the real estate company would be permitted to purchase toner at a lower price. Based on these representations, Ms. Bailey ordered what she believed to be four toner cartridges. Her company, however, received only one cartridge for which it was billed \$549 plus \$60.40 for shipping and handling. The real estate company typically purchases four cartridges for \$371. Linda-Easton Saunders, Database/LAN Administrator, Prospect Associates, testified that a telemarketer contacted her to sell a toner cartridge, which it represented was a newly manufactured cartridge that was part of a pilot program by a leading manufacturer and that would last longer than regular cartridges. The trial toner cartridge turned out to be remanufactured, not approved by the manufacturer, and twice the regular price. Finally, George Everding, Communications Coordinator, Feed My People, testified that he was called by a telemarketer and consented to an order of four toner cartridges for \$329.00. The charity was ultimately billed for \$1,316.00 for toner cartridges that Mr. Everding believes the charity never received.

Peter Grosfeld, a former manager of a telemarketing company, testified on the second panel that his former employer instructed telemarketers to misrepresent their identity and misrepresent that toner was about to increase in price significantly. Additionally, he testified that his former employer would coerce consumers into paying invoices, by using tactics such as playing tapes for customers containing contrived verifications of sales and by requiring restocking fees for returned items. Mr. Grosfeld also stated that the civil money penalties levied against his former employer were merely a “cost of doing business” given the profits the company was making. He recommended that the civil money penalties imposed on businesses should be increased to provide a deterrent to deceptive business practices.

The third panel consisted of William Duffy, President and Chief Executive Officer, Imaging Supplies Coalition for International Intellectual Property Protection, Inc., an association of office equipment manufacturers, and Ms. Tricia Burke, Vice President, Office Equipment Company, Inc., a small office product dealer. Mr. Duffy testified that the fraudulent telemarketing of office supplies is becoming more prolific, citing a 100% increase in the revenue impact of this fraud in the last three years. While he addressed the steps manufacturers are taking to decrease this type of fraud, Mr. Duffy also stated that larger civil money penalties should be imposed on

convicted fraudulent telemarketers. Ms. Burke addressed the effects this type of fraud has had on her business, as well as the steps her company has taken to protect its customers.

Jodie Bernstein, Director, Bureau of Consumer Protection, FTC, testified on the fourth panel. Ms. Bernstein announced the results of the FTC's recent enforcement actions against fraudulent telemarketers, including the largest civil penalty imposed for a violation of the FTC's Telemarketing Sales Rule. Ms. Bernstein also announced the launch of an extensive, grass-roots-based business education campaign called Project BOSS (Banish Office Supply Scams). Finally, she suggested that to provide a greater deterrent to this type of fraud, Congress may want to consider raising the maximum civil money penalty that the FTC is permitted to impose for violations of Section 5 of the FTC Act.

At the close of the hearing, Chairman Bond announced a list of tips for small businesses to avoid becoming a victim of office supply fraud and committed to continuing to work with the FTC to help deter office supply fraud.

FORUM—B2B: AN EMERGING E-FRONTIER FOR SMALL BUSINESS—
WASHINGTON, DC, MAY 18, 2000

On May 18, 2000, the Committee held a forum to explore the subject of Internet-based business-to-business (B2B) transactions and how this trend may affect small enterprises. In opening the forum, Chairman Bond raised three primary questions for the participants to address: How can small businesses take advantage of this trend? What obstacles do small businesses face in trying to take advantage of this trend? Is this trend a benefit or a problem for small businesses? He explained that the Committee's goal in holding this forum was to help the small business community better understand the opportunities that are becoming available through the use of the Internet and the computer revolution in general. Although many in high-technology industries are very familiar with these possibilities, many small businesses still lag behind and are unaware of how their businesses could benefit. Chairman Bond described the Internet as "the latest toolbox available" to help small businesses compete in the marketplace.

The forum started with opening statements from three panelists who described the Internet-based B2B trend, the range of its impact, the amount of small business participation, and how this technology can be adapted to help small firms. The first panelist was Rick Villars, Vice President for Internet and e-commerce, International Data Corporation (IDC), who described the extent of Internet-based e-commerce and the proportion attributed to small business. According to Mr. Villars, in the year 2000, B2B e-commerce will reach \$210 billion, accounting for 78% of all e-commerce worldwide. By 2004, B2B e-commerce will reach \$2.2 trillion or 88% of all e-commerce. U.S. companies will lead this trend with an estimated \$924 billion in transactions by 2004. Although U.S. small businesses have a 61% rate of Internet usage, Mr. Villars noted that they will only account for 28% of B2B e-commerce in 2000. He attributed this low level largely to the fact that small businesses frequently connect to the Internet through a dial-up modem that does not maintain a permanent connection, thereby making it impossible to use the Internet for selling merchandise. New applica-

tion service providers and web hosting technologies may help alleviate this disparity. Mr. Villars also described some of the various formats for e-commerce, such as trading communities, industry exchanges, and auctions sites, which he referred to collectively as e-marketplaces.

Angie Kim, President, EqualFooting.com, was the second panelist. Ms. Kim's company offers small businesses Internet-based purchasing opportunities similar to larger companies. As a result, small businesses can get the benefit of large volume purchasing that typically give large companies a 10% to 30% cost advantage. They can also save time by getting different price quotes via their computer instead of having to go through multiple catalogs. Ms. Kim discussed the benefits and difficulties for small businesses seeking to operate over the Internet. One problem she identified is for small firms to develop their networks to generate traffic for their web site. Ms. Kim noted that small businesses can address this issue by joining an e-marketplace or exchange for their goods such as EqualFooting.com.

The third panelist was Krish Krishnan, President and CEO, NetCompliance, Inc., which offers regulatory compliance assistance via the Internet. Mr. Krishnan described how the Internet has improved the delivery of information and communication to a wider audience. He cited statistics from Goldman Sachs that indicate small businesses accounted for \$114 billion in e-commerce sales in 1999 and will account for \$1.5 trillion by 2004. NetCompliance's web site offers users compliance assistance with all the regulations with which a particular industry would have to comply. Mr. Krishnan gave as an example gas stations that have to comply with Federal, state, and in some cases local environmental rules as well as safety and health regulations. NetCompliance identifies the relevant regulations and provides on-line filing for any forms that can be submitted in this manner. The site also offers employee training that can be completed by employees using the business' computer rather than having to take classes at remote locations. Mr. Krishnan encouraged Congress to require agencies to allow electronic filing of forms to make the requirement easier and faster for businesses.

In addition to the three panelists, 20 invited participants representing a cross section of small business and high-technology interests, took part in the forum. A discussion among the participants, panelists, Committee staff, and Members followed. Comments ranged widely from experiences of the association members who were engaged in e-commerce to cautionary descriptions of problems small businesses faced when trying to enter the e-marketplace. One participant noted that Internet-based auctions were too competitive for small businesses to be able to do well in them. Large businesses with wider profit margins on the other hand, could absorb the lower prices that auctions typically generate because small businesses do not have as great a margin on their products to be able to sell at such lower prices. Small businesses' product lines also may not be as diverse as those of large companies, which means that they will not have other products that might be able to make up for resulting losses.

Participants were also asked what Congress could do to help encourage small businesses to get more involved in e-commerce. The

consensus was that Congress should, at a minimum, do no harm. Congress should also focus on educating small businesses, perhaps by staging forums with computer demonstrations throughout the country. Some participants expressed support for the e-signature legislation that would give customers the ability to provide a “signature” on-line to verify their identity.

Chairman Bond closed the forum by thanking all the speakers and participants. He predicted that within a few years, Internet-based B2B transactions will become commonplace and a major component in the small business community’s approach to doing business.

HEARING—IRS RESTRUCTURING: A NEW ERA FOR SMALL BUSINESS—
WASHINGTON, DC, MAY 23, 2000

On May 23, 2000, the Committee held a hearing to examine the IRS’ new operating division dedicated to small businesses and the self-employed. In his opening statement, Chairman Bond stressed that one of the most pervasive issues confronting small business owners continues to be their interaction with the IRS. He noted that nearly two years ago, Congress passed sweeping legislation, the Internal Revenue Service Restructuring and Reform Act of 1998, to transform one of the nation’s most feared regulatory enforcement agencies. Congress’ goal in that legislation was for the IRS to become an agency that balances the taxpayers’ need for outstanding service with the agency’s duty to collect tax revenues in a fair and uniform manner. For small businesses, a significant part of the IRS’ transformation is expected to occur through the reorganization of the agency into four operating divisions, with the Small Business/Self-Employed (SB/SE) Division dedicated to the particular needs of small business taxpayers.

The hearing consisted of three panels of witnesses. On the first panel, Charles O. Rossotti, Commissioner, IRS, provided the Committee with an overview of the steps that the agency is taking in the near term to provide better customer service and reduce the compliance burdens on small business taxpayers. These steps include new and broader information for small businesses on the IRS web site; a second edition of the CD-ROM with business and tax information for small businesses; and improvements in electronic filing and payment of taxes. The Commissioner also described a new initiative that will permit taxpayers to authorize the IRS to deal directly with third-party tax preparers simply by checking a box on their tax return.

Commissioner Rossotti also presented a progress report to the Committee on the IRS’ new SB/SE Division, which is expected to “stand up” or become operational on October 1, 2000. He noted that the division will focus on three components, the first of which, Taxpayer Education and Communications, will work to improve compliance by assisting small businesses through education and other information before their tax returns are filed. The second component, Customer Account Services, will work to focus on resolving issues that arise after a tax return is filed. The third component will consist of the traditional compliance functions of examinations and collections.

Following the Commissioner’s testimony, Chairman Bond presented him with the results of the Committee’s year-long “IRS Pa-

perwork Unpopularity Poll,” which developed out of the Committee hearing on April 12, 1999. Through the poll, the Committee collected input from small business owners on the IRS forms, instructions, publications, letters, and notices most in need of revision. Chairman Bond applauded the Commissioner’s willingness to examine these forms and documents. He noted that it is a testament to the IRS’ overall efforts to provide improved service to America’s taxpayers and an important step toward reducing the tax filing and recordkeeping burdens that small businesses and the self-employed encounter every day.

The second panel consisted of witnesses from the GAO. During his introduction of the panel’s lead witness, Cornelia Ashby, Associate Director for Tax Policy and Administration Issues, GAO, Chairman Bond released the GAO’s report on the IRS’ efforts to construct a model that will estimate the tax burdens imposed on America’s taxpayers. The Chairman noted that the first stage of this model focuses on taxpayers with wage and investment income and is expected to assess the prefiling, filing, and postfiling burdens that these taxpayers encounter. The model will serve as the foundation for the second stage, which is expected to include a burden model applicable to small business taxpayers.

In her testimony, Ms. Ashby described the GAO’s evaluation of the new burden model, and she reported on the agency’s examination of the IRS’ plans for the new SB/SE Division. With respect to the new division, she described the GAO’s survey of small businesses to identify the problems that they have historically had in dealing with the IRS, and the GAO’s review of the difficulties that IRS has had in dealing with the diverse nature of small business taxpayers. Finally, she described how the IRS expects the new SB/SE Division to address these issues. Ms. Ashby concluded that the new division has the potential for providing improved service for small business taxpayers, and she identified several challenges facing the agency as it implements the new division, including human resource needs, technological limitations, and necessary improvements in performance management.

The third panel consisted of two private-sector witnesses who serve on IRS advisory panels. Sandra Abalos, President, Abalos & Associates, testified via videoconferencing from Phoenix, Arizona. Ms. Abalos is a member of the IRS Electronic Tax Administration Advisory Committee, and she provided the Committee with her insights into the plans for the new SB/SE Division. She focused significant attention on the IRS’ efforts to encourage and improve electronic tax filing and stressed that the agency needs to incorporate small business feedback into its planning process if it is going to develop an electronic filing program that small businesses will embrace. Ms. Abalos stressed that such a program must be viewed as a voluntary option for small business and not as another government mandate.

The final witness was Roy Quick, Jr., EA, Principal, Quick Tax & Accounting Services. Mr. Quick is also a member of the IRS Advisory Council, and he provided the Committee with his perspective on the new SB/SE Division as well as some of the agency’s efforts to provide taxpayer education in the prefiling stage in order to reduce errors and provide better compliance. Mr. Quick praised a number of initiatives in the education and outreach areas that the

IRS is currently implementing, and he recommended some changes to improve those efforts to the benefit of small business taxpayers.

In closing the hearing, Chairman Bond noted that while great efforts have gone into the planning for the SB/SE Division, the real work will begin when the new division becomes operational. To ensure that the IRS' improvements in small business service do not stop in the planning stages, he announced that he would be asking the GAO to undertake a new evaluation of the SB/SE Division and report back to the Committee next year on the changes and improvements that the agency has made for small business taxpayers.

HEARING—GAO'S PERFORMANCE AND ACCOUNTABILITY REVIEW: IS
THE SBA ON PAR?—WASHINGTON, DC, JULY 20, 2000

On July 20, 2000, the Committee held an oversight hearing on the SBA's information technology management, human capital management, and the 8(a) business development programs. The hearing was the first in a series the Committee plans to hold on the Performance and Accountability Review (PAR) that the GAO is conducting at the SBA.

In his opening statement, Chairman Bond introduced the PAR, which entails a comprehensive review of the major performance and management challenges that are critical to an agency's mission, and how such challenges affect an agency's ability to administer its core programs. The Committee and the GAO formulated the PAR to help root out systemic agency problems. The SBA was the first agency subject to a PAR and will serve as a test case for the GAO's plan to apply the PAR to other Federal agencies.

David Walker, the Comptroller General of the United States, was the sole witness on the first panel. He addressed the importance of strategic oversight, noting that the focus of such oversight should shift to reviewing overall agency management and effectiveness and that the PAR is intended to provide such an assessment. He explained that a PAR entails a review of mission-critical programs and ties the agency's program problems to systemic issues related to general agency operations. Mr. Walker also explained the three primary reasons that the GAO selected the SBA for the first application of PAR. First, the SBA is a small agency that permits the GAO to hone the prototype for use in evaluating other agencies. Second, the SBA is in transition from a programmatic agency that conducts most activities in-house to a regulatory agency that oversees the conduct of out-sourced activities. Finally, the GAO and the Inspector General (IG) of the SBA have raised many concerns over the last several years about how the SBA operates its core programs.

The second panel consisted of three GAO officials who addressed the first three areas reviewed under the SBA's PAR. Stanley Czerwinski, Associate Director, Housing and Community Development Issues, Resources, Community and Economic Development Division, GAO, testified about the GAO's two reports on the 8(a) business development program. He stated that the GAO found that the 8(a) program, as it is currently operated, does not meet the needs of the firms that use the program. In addition, the database that the SBA created to track the program does not contain the information the agency needs to manage the program effectively. Furthermore the business assistance provided by the SBA under

the program does not focus on the businesses that truly need such assistance. According to the GAO's survey of firms participating in the 8(a) program, while 86% of the firms surveyed joined the 8(a) program to obtain contracts, only a very small percentage of firms in that program obtain contracts. Mr. Czerwinski testified that the SBA focuses on providing 8(a) firms with management assistance rather than contracting assistance, despite the fact that many firms in the 8(a) program already have substantial management experience.

The next witness on the second panel was Joel Willemssen, Director, Civil Agencies Information Systems, Accounting and Information Management Division, GAO, who testified about the GAO's report on the SBA's management of its information technology. He stated the GAO found that policies and procedures for the five categories examined are only partially implemented, are in draft form, or do not exist in any form. As a result, the SBA cannot ensure that its information technology meets current or future needs or that it has the human capital to implement the necessary reforms.

The final witness on the second panel was Michael Brostek, Associate Director, Federal Management and Workforce Issues, General Government Division, GAO. Mr. Brostek testified about the GAO's report on the SBA's management of its human capital. He stated that while the SBA has undertaken useful human capital initiatives, these efforts are incomplete and place at risk the success of the agency's attempt to redesign its business processes and to transform its workplace. Mr. Brostek noted that the SBA has not conducted the workforce planning it needs to determine whether the agency has the appropriate personnel to conduct its mission now or in the future. He also explained that the SBA has not prepared for succession of its current senior management or trained its current staff to ensure that they can perform the duties and responsibilities of senior management.

The third panel consisted of Aida Alvarez, Administrator, SBA, who testified at length about the various programs the agency operates to assist small businesses, and she provided statistics on the outputs of such programs. She added that the SBA intends to make the commitment of resources and effort necessary to improve its information technology management. She agreed that the GAO's recommendations will help the SBA develop information technology management. Ms. Alvarez also stated that the SBA has begun a comprehensive workforce planning effort by taking steps to manage its human capital activities better, including development of job descriptions and related training or retraining. She echoed some of the GAO's recommendations, stating that the SBA also must take the following steps: develop a succession plan for current senior management, reinstate management training, estimate the number of employees needed with certain skills, and ensure adequate employee training. Additionally, she noted that the SBA has begun to transform itself by transitioning its employees from making and servicing loans to overseeing private sector partners engaged in these activities.

Ms. Alvarez concluded her remarks by agreeing that improvement is needed in tracking assistance provided to 8(a) firms and measuring the program's performance. She stated that 7(j) funding limitations prevent the agency from providing management and

technical assistance to 8(a) firms. She agreed, however, with the GAO's recommendation that the SBA must do more to improve the 8(a) program and assist the small businesses that it is designed to benefit.

ROUNDTABLE—WHAT IS CONTRACT BUNDLING?—WASHINGTON, DC,
SEPTEMBER 13, 2000

On September 13, 2000, the Committee held a roundtable comprising the Directors of the OSDBUs to consider matters related to contract bundling. The roundtable focused on the July 26, 2000, final regulations of the SBA, implementing the anti-bundling provisions of the Small Business Reauthorization Act of 1997. Specifically, the roundtable discussed whether small business advocates (including the SBA's Procurement Center Representatives and the OSDBUs) would have timely information about prospective bundling to enable their intervention. Also, the roundtable discussed the meaning of "measurably substantial" benefits, which under the law and regulations permits a prospective bundling to be considered "necessary and justified."

In his opening remarks, Chairman Bond noted the importance of sound regulations to ensure a workable process for monitoring and controlling contract bundling. In FY1999, the government purchased \$199 billion in goods and services through more than 10.5 million contract actions. These contracts averaged out to \$378,000 in purchasing, and 20 contract actions for every minute of every day. An ongoing administrative review process is essential to ensure effective oversight of that volume of activity. Chairman Bond observed that publication of final bundling rules allows the Federal Procurement Data Center to make the necessary revisions to collect systematic data on bundling.

Stan McCall, Small Business Specialist, NASA, commented that an ongoing relationship between the agency purchasers and the SBA's Procurement Center Representatives (PCRs) will help ensure that any significant matters are reviewed by a small business advocate. Ken Bryan, Director, OSDBU, DoJ, however, said that the scarcity of PCRs made it difficult to ensure such reviews. Linda Williams, Deputy Administrator, Office of Government Contracting and Minority Enterprise Development, SBA, agreed that PCR coverage was not sufficient, but she noted that the SBA has hired an additional 13 PCRs to help address that deficiency.

Tracey Pinson, Director, Small and Disadvantaged Business Utilization (SADBU), Department of the Army, said that the Defense Department's Form 2579 required signatures from the contracting office's SADBU representative, as well as the PCR, if a PCR is assigned to that office. Mirinda Jackson, Deputy Associate Administrator, Office of Enterprise Development, General Services Administration (GSA), observed that GSA Form 89 similarly allows a PCR to sign off on GSA procurements that are not set aside for small business. These forms help ensure that at least one small business advocate reviews the acquisition strategy.

The roundtable also examined the elements constituting a contract to help determine when the bundling regulations might apply. Mike Gerich, Deputy Associate Administrator, Office of Federal Procurement Policy, stated that a contract differs from a contract action; contract actions may also include modifications to existing

contracts. Also, orders placed under an existing contract would not necessarily be considered new contracts, although some agencies are adopting supplemental procurement regulations to clarify that point. Mike Green, Deputy Director, OSDBU, Department of Agriculture, emphasized the potential for Government-wide Acquisition Contracts (GWACs) to become de facto bundled procurements by allowing many agencies to purchase goods or services off a single contract. Previously each agency might have had its own separate contract. Esther Aguilera, Director, OSDBU, DoE, said GWACs have a tendency to expand into new requirements and that the contract modifications must also be monitored. Durie White, Operations Director, OSDBU, Department of State, and Chair, OSDBU Directors' Interagency Council, warned that GWACs pose special problems for OSDBUs to monitor since their agency's procurement offices are purchasing off contracts awarded by another agency.

With respect to specific standards used in the SBA regulations, Mr. McCall was concerned about too much focus on measuring potential benefits from bundling and not enough attention to its costs in reducing competition and effect on the tax base. Robert Neal, Director, OSDBU, DoD, noted that consolidations and efficiencies tend to encourage reliance on mature firms with established past-performance records, rather than emerging start-ups. He commented that the cost-benefit analysis tools developed under OMB Circular A-76 could be useful in assessing costs and benefits in contract bundling. Anthony DeLuca, Director, SADB, Department of the Air Force, stated that the effects of contract bundling on small business and on the economy in general are not yet known.

Scott Denniston, Director, OSDBU, VA, warned that the OSDBUs often are challenged by simply attempting to find out what is happening. His office resorts to reading the Commerce Business Daily as a way of finding out about VA procurements that may not otherwise be called to his attention. He noted that the procurement forecast published by his office should provide guidance to small businesses to market themselves to the VA as potential vendors of the forecasted purchases. Robert Neal emphasized that OSDBUs do not sign contracts. Thus, the commitment of the senior agency leadership tends to determine success or failure in an agency's small business program. Jeanette Brown, Director, OSDBU, EPA, said that contracting officers and program managers made the actual decisions about where to spend procurement dollars and that the small business program needs to ensure greater accountability on their part. Sharron Harris, Director, OSDBU, Department of Agriculture, stated that senior agency leadership often was concerned with the success of an agency's project, and unless the senior leadership understood how small business could enhance the agency's ability to succeed, their tendency was effectively to discourage contracting officers from relying on small business.

The roundtable adjourned following a discussion by Mr. Neal of the preliminary findings his office was discovering in a review of 10 contract consolidation cases.

HEARING—SLOTting FEES: ARE FAMILY FARMERS BATTLING TO STAY
ON THE FARM AND IN THE GROCERY STORE—WASHINGTON, DC, SEP-
TEMBER 14, 2000

On September 14, 2000, the Committee held its second hearing on slotting allowances, which occurred exactly a year from the first Committee hearing on this issue. The hearing provided an opportunity for the Committee to receive an update on the status of government efforts to understand slotting allowances and to gain a better understanding of these fees as they pertain to the marketing of fresh produce.

Chairman Bond recounted what the Committee had learned through its prior hearing and continued investigation of slotting fees. Specifically, he cited information received by the Committee that large-chain retailers routinely demand substantial up-front slotting payments from manufacturers to put products on the shelf or to keep them on the shelf. In addition, the Committee learned that the products of small businesses are often excluded simply because they cannot afford the excessive payments. A significant obstacle to understanding the actual effect of slotting allowances on competition, however, is the lack of detailed data available to government and academic researchers. Chairman Bond emphasized that in order to make policy decisions about this issue, Congress and the relevant Federal agencies must be able to examine transaction-level data covering the amount that retailers collect, how the fees are negotiated, and the use of such fees.

Chairman Bond also addressed the request the Committee made to the GAO to gather such information from retailers and manufacturers. He noted that the retail-grocery and food-manufacturing industries have been unwilling to provide data to the GAO on what is actually occurring in the marketplace. The industries' apparent resistance to an open and frank dialogue on the use and effects of slotting fees raises significant suspicion that these fees are regularly employed in an anti-competitive manner and are not merely a risk-sharing mechanism that reflects actual costs of retailers. Given the industry's reluctance to provide information, Chairman Bond announced that he had secured \$900,000 in the Commerce, Justice, State and the Judiciary appropriations bill for the FTC to conduct an in-depth study into slotting fees and their competitive effects.

The hearing's first panel consisted of Thomas Stenzel, President and CEO, United Fresh Fruit and Vegetable Association; David Moore, President, Western Growers Association; and Michael Stuart, President, Florida Fruit & Vegetable Association. Each witness addressed the concerns within the produce industry regarding the escalating practice of charging slotting fees for produce and, in particular, for loose fruits and vegetables. Each witness on the panel also stated that produce growers and shippers are being asked by retailers to pay off-invoice fees, which are unrelated to actual product cost, merely to continue doing business. Mr. Stenzel emphasized that transparency of industry practices will rein in the abuses that currently occur in the market. He also addressed how slotting allowances and other similar fees provide up-front profit to the retailer, thereby reducing retailers' incentive to sell produce to consumers.

Mr. Moore testified that retailers are not reducing retail prices for produce when there is a corresponding reduction in the price a grower receives for produce. He stated that when combined with the fees charged for the privilege of doing business, the price received by growers can force them to sell their commodities at a loss. This not only harms produce growers, but denies consumers a choice of products. Finally, Mr. Stuart testified about the retail concentration in the grocery industry and indicated that as supermarket chains have become fewer and larger, they have developed considerable bargaining advantages over their produce suppliers, many of whom are small to medium-sized family businesses. The result has been that retailers continually try to reduce the prices paid to growers, thus jeopardizing the growers' ability to stay in business.

Lawrence Dyckman, Director of Food and Agriculture Issues, Resources, Community, and Economic Development Division, GAO; Susan Offutt, Administrator, Economic Research Service (ERS), U.S. Department of Agriculture; Gregory Gundlach, Professor, Mendoza College of Business, University of Notre Dame, appeared on the second panel. Mr. Dyckman testified that the GAO was unsuccessful in gaining the cooperation needed from the industry to conduct a study on slotting fees. He stated that neither grocery companies nor food manufacturers would make detailed information on slotting fees available to the GAO, despite a pledge by the GAO that it would take steps to ensure confidentiality of the documentation and a pledge by the Committee that it would not seek information that would identify any particular manufacturer or retailer outlet.

Ms. Offutt testified about the preliminary results of a study conducted by the ERS on trade practices in the fresh fruit and vegetable markets. She stated that the ERS has found that fixed or variable fees and trade allowances have increased in incidence and magnitude over the last five years. The ERS did not, however, review the effect that such fees have on produce growers and shippers, and Ms. Offutt confirmed that the ERS intends to review this issue in future studies. Finally, Mr. Gundlach testified about the current state of academic and government research on slotting fees, emphasizing that without analyzing transaction-level data, the claims of pro-competitive or anti-competitive aspects of slotting and similar fees cannot be proven. He also stated that the FTC has focused on how slotting fees can be used by dominant manufacturers to exclude competitors, but the agency has not focused on the effect that retail concentration has on increasing the bargaining power of retailers to demand such fees. Mr. Gundlach suggested that this is an important issue that should be examined by the FTC.

Chairman Bond concluded the hearing by announcing that the Committee would follow up with the FTC to receive assurances that it will use the additional \$900,000 in the Commerce, Justice, State and the Judiciary appropriations bill to collect detailed information on slotting allowances and related practices so that public policy decisions can be made on this issue.

JOINT HEARING WITH THE SENATE SPECIAL COMMITTEE ON AGING—
PENSION TENSION: DOES THE PENSION BENEFIT GUARANTY COR-
PORATION DELIVER FOR RETIREES?—WASHINGTON, DC, SEPTEMBER
21, 2000

On September 21, 2000, the Committee held a joint hearing with the Special Committee on Aging to conduct oversight of the Pension Benefit Guaranty Corporation (PBGC). The hearing examined three major issues: (1) the ability of the PBGC to deliver timely and accurate determinations of benefit levels to retirees whose pension plans have failed and been taken over by the PBGC, (2) the security of the PBGC's information systems, (3) and the appropriateness of the PBGC's contracting practices.

In his opening statement, Chairman Bond commented on the particular interests of the Committee on Small Business in overseeing the PBGC. Because defined-benefit pension plans pay insurance premiums to the PBGC, and because most pension plans (like most businesses) are small, the Committee has a responsibility to monitor whether participating plans are receiving adequate and appropriate benefits for their premiums. The Committee also has a long-standing concern with government-contracting practices that may enhance or impede small business participation.

The first two witnesses testified about individual experiences with the PBGC. Thomas A. Parks, a resident of Cedar Rapids, Iowa, told the Committee of his experiences and problems attempting to ascertain his definitive benefit level under the Kwik-Way Manufacturing Company's pension plan, which had failed and had been taken over by the PBGC. Mr. Parks noted that early in his interaction with the PBGC, he had received a check drawn from a bank other than the one the PBGC had previously indicated and drawn against a pension plan to which Mr. Parks had no connection. He subsequently received a duplicate check drawn on the correct bank for the correct plan, and he returned the erroneous amount. Mr. Parks wrote the PBGC in April of 1996 to recount a series of errors, including the erroneous check, and received no clarifying response. When Mr. Parks finally received his definitive statement of benefits, it differed from the estimate originally supplied him by the Kwik-Way plan administrator by only five cents per month. He noted that the PBGC's determination occurred eight years after the agency had first become involved with the Kwik-Way plan failure.

Bonne McHenry, a former employee of the Integrated Management Resources Group [the PBGC's contract manager for its Atlanta Field Benefit Administration (FBA) office], recounted her observations from her work for the PBGC. Ms. McHenry noted that the definitive statement of benefits, known as an Initial Determination Letter (IDL), is the most important document a pensioner receives from the PBGC. She commented that the PBGC had sent out IDLs with inaccurate benefit amounts, erroneous plan options selected, and incorrect names and Social Security numbers. Some IDLs had invalid data entered into the wrong fields, such as benefit levels printed in the space reserved for dates. She stated that, when participants who received such incorrect IDLs contacted her, she was able to consult the source documents from the failed plan and determine the correct information, which suggested that these

errors arose when the plan information was transferred to the PBGC database. Ms. McHenry stated that she did not believe the PBGC's management was responsive to Atlanta employees' concerns about these errors.

Wayne Robert Poll, Inspector General (IG), PBGC, testified that his office had conducted a penetration test of the PBGC's computer systems. He noted that prior to conducting the penetration study of computer security, he had informed three members of the PBGC's management that he would be conducting such a study. However, the computer systems were still found to be vulnerable. Mr. Poll indicated that the PBGC did not have an information security program and employees were not sufficiently aware of security concerns. His team was able to penetrate the PBGC's computer systems by dialing in from remote locations and by obtaining unauthorized access from computers at the agency. The team was able to gain systems-administrator level of access to the PBGC computers, giving them the ability to create, delete, and modify data in the PBGC database. Mr. Poll indicated that he would be conducting a follow-up penetration study after the PBGC had completed its implementation of his recommendations from the previous test.

Mr. Poll also reported on studies he had conducted concerning the issuance of IDLs, particularly their timeliness. He found that approximately half of the IDLs were issued more than seven years after the PBGC became the trustee of a failed plan. Moreover, even when the PBGC had completed all of the calculations necessary to determine a participant's benefit levels, the agency often required an additional year to prepare the benefit letter and send it. Mr. Poll noted that when he first examined this issue, the PBGC sent out only 35% of IDLs within a year of completing these calculations. A follow-up study indicated that this percentage had later increased to 80%.

In addition, Mr. Poll commented that the PBGC's management did not seem sensitive to the impact that delayed IDLs have on the participants. The agency management thought that since participants received an estimated benefit payment until the definitive level was determined, the pensioners were not significantly harmed. Mr. Poll noted that this view was not shared by pensioners, who reported economic hardships, such as having to repay the PBGC for estimated benefits that turned out to be a higher amount than the actual benefits to which they were entitled.

Barbara Bovbjerg, Associate Director, Health, Education, and Human Services Division, GAO, discussed findings of a GAO report on the PBGC's contracting practices. The report, requested by Chairman Bond and Chairman Charles Grassley (R-IA), Special Committee on Aging, found that the PBGC had begun to rely heavily on contractors to address a large workload that accumulated due to several large pension plan failures in the mid-1980s. Although the PBGC's workload has diminished significantly due to economic strength and fewer new failures, the PBGC continues to rely heavily on contractors without a systematic plan to coordinate contracts with expected workloads.

Ms. Bovbjerg also expressed concern that the PBGC's contracting practices were not designed to maximize competition and cited instances in which procurement strategies appeared to be designed

to favor incumbent contractors. She also observed that the PBGC did not collect management data specific to each contractor-operated office to help assess the contractor's performance. Finally, she reported that the PBGC's contracting audit office was not organizationally placed to ensure independent judgment in reviewing contracts. Robert H. Hast, Assistant Comptroller General for Special Investigations, GAO, also testified about certain contracting matters that came to the GAO's attention in the course of its contract-management study, which would be referred to the DoJ for further investigation.

David Strauss, Executive Director, PBGC, stated that he had confidence in the integrity of the PBGC's contracting staff and submitted for the record a history of past investigations into the contracting matter discussed by Mr. Hast. Mr. Strauss stated that he welcomed any further information from the GAO that would help put the allegations to rest. Mr. Strauss also emphasized the PBGC's commitment to carrying out its obligations under the Employee Retirement Income Security Act (ERISA) to ensure continuous payment of benefits to pensioners. He stated that, in most cases, the estimated benefit payments made prior to the calculation of the definitive benefit levels have been very close to the correct amount. Mr. Strauss stated that he welcomed the recommendations of the IG and the GAO and indicated that the PBGC had been implementing the computer-security recommendations made by the IG.

HEARING—THE U.S. FOREST SERVICE: TAKING A CHAIN SAW TO SMALL BUSINESS—WASHINGTON, DC, OCTOBER 4, 2000

On October 4, 2000, the Committee held a hearing to examine the effect of U.S. Forest Service rules and regulations on small businesses. The hearing was chaired by Senator Mike Enzi (R-WY), who stressed that a growing pattern of Forest Service actions are shutting out small businesses from public lands and contributing to the destruction of rural communities. Senator Enzi noted that large timber companies are not affected by having the public lands closed off to them; in some ways, they are even helped. These large companies have private sources in the American Southeast and Canada that allow them to keep their mills running. In contrast, the small mills are closing because of Forest Service policies, which results in increased market share for the large lumber companies.

Senator Enzi criticized the Forest Service for the agency's approach to the RFA. He stressed that, through the RFA, Congress has shown that it wants small businesses to be a partner with the Forest Service in developing rules and regulations that will let a healthy environment and small businesses flourish side by side. He pointed out that the current Administration has lost this sense of balance, preferring instead to promulgate regulations solely for the stated purpose of "saving the environment," without any attention being paid to their effect on small businesses. Senator Enzi concluded by emphasizing that a healthy environment must have a healthy economy, and small businesses are the best hope to preserve the environmental resources for the future.

Senators Mike Crapo (R-ID) and Conrad Burns (R-MT) echoed the concern that the Forest Service has ignored the impact of its regulations and not followed the mandates of the RFA. Senator

Crapo stressed that the Forest Service has not been held accountable for the economic impact of the agency's rules and regulations, noting for example the agency's Roadless Initiative. Senator Burns added that natural resources are going to waste while mills are being abandoned and roads are being closed. He called the Committee's attention to a slice of a large tree that had died as a result of pine borer beetles. Although the tree was close to a road, it would not be harvested under the Forest Service's Roadless Initiative because access would be impossible. He emphasized that leaving this timber to decay was not only a waste of available timber, but would also contribute to the fuel build up in the forests, which led to the massive fires of this summer.

The first panel included two Senators from the Northwestern United States. Senator Craig Thomas (R-WY) noted that public lands were designed for both economic and recreational use, and these two interests should not be pitted against each other when they can coexist. He emphasized that local residents have been given no recourse to the mandates from Washington. In particular, the Forest Service's Roadless Initiative was designed from the top down, contrary to all previous Forest Service policies, and has resulted in a proposal that would be devastating to the local interests. Senator Larry Craig (R-ID) offered two conclusions from his experience of chairing the Forests and Public Land Management Subcommittee of the Committee on Energy and Natural Resources. First, the Forest Service is the single most important agency affecting small business interests in the western states, determining the future of small businesses in many cases. Second, there is not an agency in the Federal government that is less sensitive to the needs of small businesses. Senator Craig proposed to remedy this situation by creating an independent Office of Small Business Advocacy inside the Forest Service that would have the responsibility for approving the regulatory flexibility analyses and the agency's compliance with the RFA before a regulation could be issued.

The second panel consisted of four small business owners who have been adversely affected by Forest Service policies. Jim Hurst, President, Owens & Hurst Lumber Co., Inc., testified that Forest Service regulations were a direct threat to the rural, western culture, which is dominated by small businesses. He noted that big environmental groups and the large timber companies work together to influence the Federal government to lower timber harvest limits, which has severe implications for small timber operators. Since the large lumber companies harvest most of their timber on their own lands, they remain largely unaffected by decisions of the Forest Service. Joel Bousman, Cattle Rancher, and Regional Vice President, Wyoming Stockgrowers' Association, explained that the Federal government could put him out of business with one stroke of the pen. As a rancher, his business depends on grazing. He stressed that if he loses his grazing permit, he would have either to downsize or buy more land; neither would be feasible. Instead, he would probably have to sell his business, most likely to some type of developer, which would sacrifice the wild and unspoiled nature of the land that the Forest Service intends to preserve through its restrictions on grazing permits. Mr. Bousman also described how his two sons hope to continue operating the ranch, but they may not be able to if the grazing permits are further reduced.

Del Tinsley, Owner/Publisher, Wyoming Livestock Roundup, and Advisory Board Member, University of Wyoming College of Agriculture, echoed many of the same concerns as the other witnesses on the panel. He stressed the need for an economic impact study, as opposed to an environmental impact study, to be conducted for each new rule and regulation that the Forest Service proposes. He asserted that the “unintended consequences” of these rules and regulations could be greatly reduced, and rural communities would not be destroyed. The final witness on the panel, Al Bukowsky, Owner/Operator, Solitude River Trips, described the adverse impact of the Forest Service’s manipulation of the recreational-permit process. He stressed that outfitters depend on camping permits in order to provide their recreational services. With Forest Service rangers closing down campsites and suspending river usage on as little as 12 hours notice, outfitting businesses are in serious jeopardy. Mr. Bukowsky recalled that there used to be a time when Forest Service rangers and outfitters worked together, and he expressed the hope that such a time would return soon.

The third panel consisted of two academic experts who expounded on the effects of Forest Service rules and regulations on small businesses. Larry W. Van Tassel, Professor and Head of the Department of Agricultural Economics and Rural Sociology, University of Idaho, discussed a study he conducted that demonstrated that reducing Forest Service grazing permits for ranches leads to greater economic instability, lower profits, and job losses. The study also concluded that reduced grazing permits can increase the potential for the sale of the property to developers with ensuing loss of habitat for wildlife and other losses associated with converting natural land to developed land. William McKillop, Professor Emeritus, College of Natural Resources, University of California at Berkeley, discussed statistics demonstrating the decline of the timber industry in the West. He noted that this data shows that the decline disproportionately affects the small sawmills. The decline has also had a ripple effect, taking many other industries down with it.

The final panel consisted of James Furnish, Deputy Chief, U.S. Forest Service, who testified that the Forest Service regulations do not negatively affect small businesses. He asserted that the Forest Service takes pride in working with the SBA’s Office of Advocacy to examine the effects of the agency’s regulations on small businesses. He also advanced that when local communities face hardship, the Forest Service is committed to helping them strengthen and diversify their economies through the wise, and more complete use of forest resources. Due to an objection to the Committee’s request to meet beyond the Senate’s two-hour limitation, the Committee was forced to adjourn the hearing without a full period of questioning for Mr. Furnish. Senator Enzi noted that the Committee would submit written questions to the Forest Service and asked that the agency’s responses be included in the hearing’s written record.